federal register

WEDNESDAY, OCTOBER 29, 1975

PART III:

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN THE MINNEAPOLIS-ST. PAUL AND CERTAIN OTHER MARKETING AREAS

Recommended Decision and Opportunity to File Written Exceptions

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1060, 1061, 1068, 1069, 1076]

[Docket Nos. AO–178–A33, etc.]

MILK IN THE MINNEAPOLIS-ST. PAUL AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	Docket No.
1060	Minnesota-North Dakota	AO–360–A10.
1061	Southeastern Minnesota-Northern Iowa.	AO–367–A9.
1068	Minneapolis-St. Paul, Minn.	AO–178–A33.
1069	Duluth-Superior	AO–153–A22.
1076	Eastern South Dakota	AO–260–A21.

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before November 28, 1975. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Minneapolis, Minnesota, on November 11–20, 1974, pursuant to notice thereof which was issued on October 11, 1974 (39 FR 37164).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and/or expanded marketing areas is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether any combination of the aforesaid marketing areas or parts thereof should be included under one or more orders;

3. Whether any proposed marketing area should be expanded to include additional territory in the States of Minnesota, South Dakota and Wisconsin; and

4. With respect to any of the aforementioned existing orders, or proposed combination thereof, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices, butterfat differentials, and location adjustments;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

1. *Character of Commerce.* The handling of milk in the proposed Upper Midwest marketing area and in the modified marketing area of the Eastern South Dakota Order No. 76 is in the current of interstate commerce and directly burdens or obstructs interstate commerce in milk and milk products.

The proposed marketing area, designated as "Upper Midwest marketing area," will include the present marketing areas of Orders 60 (Minnesota-North Dakota), 61 (Southeastern Minnesota-Northern Iowa), 68 (Minneapolis-St. Paul), 69 (Duluth-Superior), the northern part of the present Order 76 (Eastern South Dakota) marketing area, and presently unregulated territory in Minnesota and Wisconsin. This covers territory in Minnesota, Wisconsin, Iowa, North Dakota, and South Dakota. Because territory in five states is included in the Upper Midwest marketing area and territory in three states is included in the Eastern South Dakota marketing area, interstate commerce necessarily is involved.

Milk procurement in this area crosses state boundaries. Handlers regulated by the Minneapolis-St. Paul order procure milk in Minnesota and Wisconsin; handlers regulated under the Minnesota-North Dakota order procure milk in Minnesota, North Dakota, and South Dakota; handlers regulated by the Eastern South Dakota order procure milk in Minnesota, North Dakota, and Iowa; handlers regulated by the Southeastern Minnesota-Northern Iowa order procure milk in Minnesota, Wisconsin, and Iowa; and handlers regulated by the Duluth-Superior order procure milk in both Minnesota and Wisconsin.

Similarly, retail sales of fluid milk products are intermingled among the various states in this region. Milk regulated under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders is disposed of in Minnesota, Wisconsin, and Iowa; milk regulated under the Minnesota-North Dakota order is disposed of for sale in both Minnesota and North Dakota; milk regulated under the Eastern South Dakota order is disposed of in South Dakota, Minnesota, and Nebraska; and milk regulated under the Duluth-Superior order is disposed of in both Minnesota and Wisconsin.

In addition to the interstate movements of bulk milk or packaged fluid milk products described above, there are numerous manufacturing plants within the proposed marketing areas (in each of the States of Minnesota, North Dakota, South Dakota, Wisconsin, and Iowa) that produce manufactured dairy products offered for sale in these and other states.

2. *Need for merger of orders.* Marketing conditions in the five separately regulated marketing areas under consideration justify merger of the orders regulating the handling of milk in these areas, except for the southern portion of the Eastern South Dakota marketing area.

The merger of all five markets under consideration (i.e.—Southeastern Minnesota-Northern Iowa, Minneapolis - St. Paul, Duluth-Superior, Minnesota-North Dakota, and Eastern South Dakota) was proposed by the National Farmers' Organization (NFO). This producer cooperative association represents producers supplying milk to the Minneapolis-St. Paul order market. In previous periods, it also has supplied milk to the Duluth-Superior order market.

The merging of the Southeastern Minnesota-Northern Iowa, Minneapolis-St. Paul, and Minnesota-North Dakota orders was proposed by Land O'Lakes, Inc. Land O'Lakes, Inc., represents producers supplying the Minnesota-North Dakota, Minneapolis-St. Paul and Eastern South Dakota order markets. Land O'Lakes also operates a distributing plant in the Duluth-Superior order market as well as distributing plants in the Minneapolis-St. Paul and Eastern South Dakota order markets. Mid-America Dairymen, Inc., proposed the merging of the Southeastern Minnesota-Northern Iowa, Minneapolis-St. Paul, and Minnesota-North Dakota orders. Mid-America represents producers supplying the Minnesota-North Dakota and Minneapolis-St. Paul order markets.

There was opposition expressed to merging several of the named markets. Associated Milk Producers, Inc., supplying the Southeastern Minnesota-Northern Iowa order market, opposed the inclusion of this market. The Twin Ports-Arrowhead Cooperative Dairy, representing producers supplying the Duluth-Superior order market, opposed the inclusion of that market. Representatives of Land O'Lakes, Inc., and Mid-America Dairymen, Inc., opposed inclusion of the Duluth-Superior and Eastern South Dakota orders.

Various proposals to add additional territory either to the merged marketing areas or to individual markets were made. These matters are dealt with under Issue No. 3.

The reasons given by proponents for merging the several orders included the

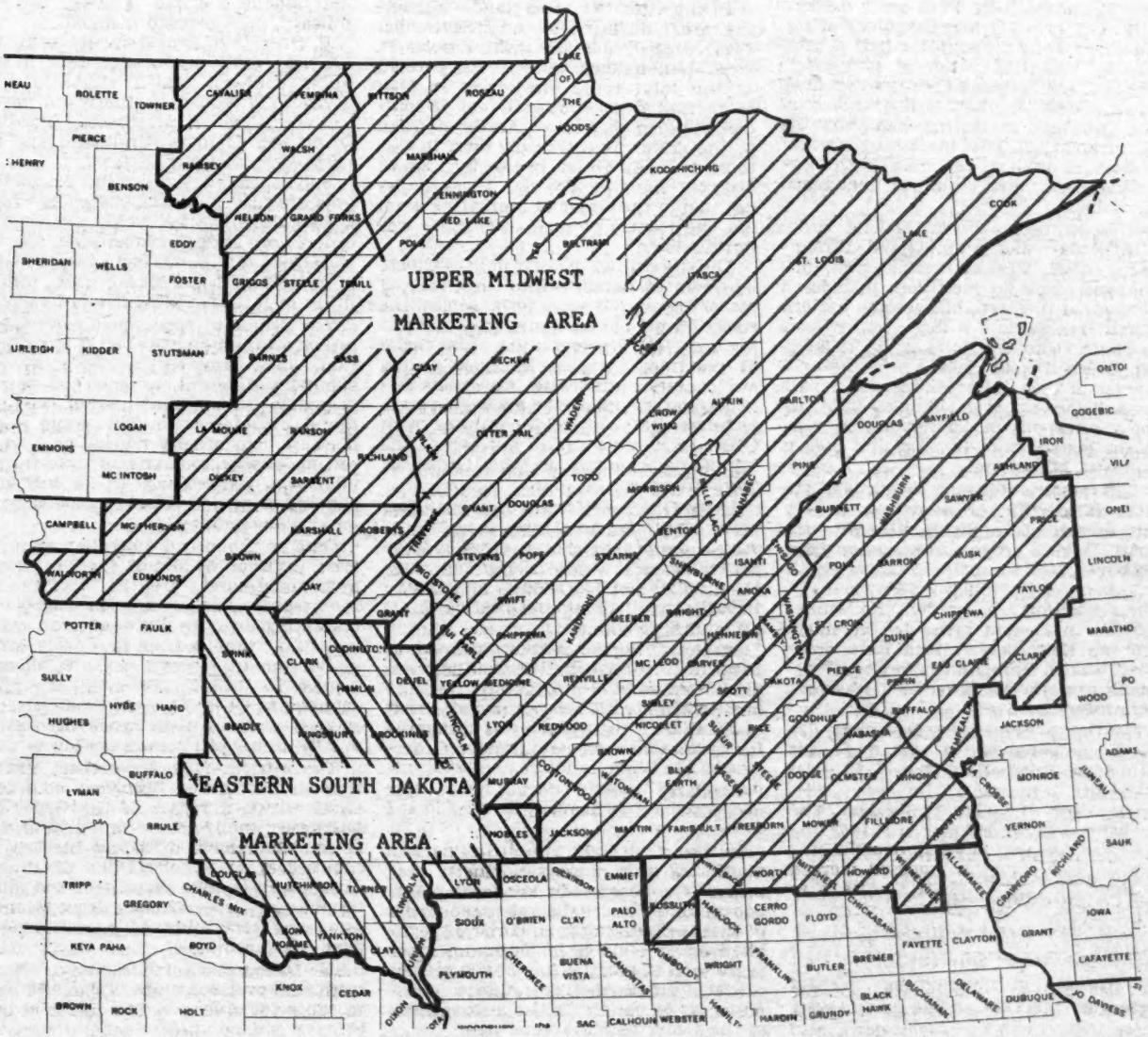
following: (1) Differences in uniform prices among the several orders cause discontent among producers; (2) the overlap of procurement and Class I distribution indicate a unity of the marketing system; (3) some of the markets are inaccesible to producer groups seeking to supply those markets; (4) efficiencies in marketing could be achieved through merging the orders; and (5) marketing stability and flexibility could be achieved with a uniform regulation over a larger area.

Those parties opposed to the merger of certain markets stressed the lack of relationships of such markets to others among the five or claimed that the particular market had a closer relationship to other markets outside these five markets.

It is concluded on the basis of the record evidence that orderly marketing will be served by merging Orders 60, 61, 68, and 69, and part of Order 76 into a single new order to be known as the "Upper Midwest" marketing area. The Eastern South Dakota order, with the exception of five of its northernmost counties, should not be included in the merger, but should be expanded to include three now unregulated counties in southwestern Minnesota and two now unregulated counties in eastern South Dakota.

The two marketing areas, as proposed herein, are shown in the following map:

PROPOSED UPPER MIDWEST AND EASTERN SOUTH DAKOTA MARKETING AREAS



HISTORY OF REGULATION AND DESCRIPTION OF PRESENT MARKETING AREAS

Federal regulation in this area was first initiated in 1941 and was subsequently extended to include all of the heavily populated areas of Minnesota and eastern North and South Dakota. The Minneapolis-St. Paul order (Order 68), promulgated November 3, 1945, applied to a marketing area including the cities of Minneapolis and St. Paul, and surrounding territory in Anoka, Dakota, Hennepin, Ramsey, and Washington Counties of Minnesota. That marketing area was expanded in May 1969 to include all of 21 Minnesota counties and portions of St. Croix and Pierce Counties, Wisconsin.

The Southeastern Minnesota-Northern Iowa order (Order 61, also referred to as Dairyland) was effectuated May 1, 1969. The Dairyland marketing area and the Minneapolis-St. Paul order marketing area form a geographic block of territory covering the southern half of Minnesota, excepting a tier of counties in western Minnesota, which has remained unregulated. The northern boundary of the Dairyland marketing area abuts the Minneapolis-St. Paul marketing area for a distance of about 140 miles. Both marketing areas have remained unchanged since 1969.

The Minnesota-North Dakota order (Order 60) was promulgated November 1, 1967. The marketing area, unchanged since its inception, includes a portion of western Minnesota, eastern North Dakota, and a three-county area in South Dakota. It joins with the Eastern South Dakota order marketing area (Order 76) on its southwestern border for a distance of over 110 miles and joins the Minneapolis-St. Paul marketing area at the boundary of Douglas and Stearn Counties, Minnesota.

The present Eastern South Dakota order (Order 76) resulted from a May 1965 merger of the Sioux Falls-Mitchell, South Dakota order (promulgated September 1, 1952) and the Eastern South Dakota order (promulgated May 1, 1955). The marketing area borders the Minnesota-North Dakota order to the north and the Nebraska-Western Iowa order to the south. Unregulated territory borders the marketing area on its eastern and western borders.

The Duluth-Superior order (Order 69) was promulgated May 5, 1941. The marketing area originally included the cities of Duluth, Minnesota; Superior, Wisconsin; and Cloquet, Minnesota. The market was expanded March 1, 1960 and now includes all of Carlton County, Minnesota, and Ashland, Douglas, and Bayfield Counties, Wisconsin.

THE CASE FOR MERGER

There are many different factors that are relevant in determining whether these five markets should be merged. These factors can be broken down into the following categories: (a) Overlap of Class I distribution; (b) Overlap of procurement areas; and (c) Market structure and accessibility.

A. *Overlap of Class I distribution.* The range of distribution by regulated handlers has expanded greatly since these five orders were promulgated. The reasons for this expansion are varied, but generally can be attributed to the spread of urbanized areas, better roads, improved technology, economies of large scale operation, and reciprocity of health standards.

As handlers have extended their range of distribution, they have increasingly disposed of fluid milk products in the marketing areas of neighboring orders. Not all such instances are described in detail below because of the restrictions protecting confidentiality of information relating to operations of individual handlers.

In the Order 61 (Dairyland) marketing area, during May and September 1974, nine Order 68 (Minneapolis-St. Paul) handlers accounted for 25 percent of the total route disposition in that marketing area. Another Order 68 handler testified that he began distribution in the Order 61 marketing area in October 1974. An Order 76 (Eastern South Dakota) handler also has Class I disposition in the Order 61 marketing area, but the volume of such disposition was not disclosed.

The disposition of fluid milk products by Order 68 handlers into the Order 61 marekting area is spread over almost the entire Minnesota portion of that marketing area. The representative of an Order 61 regulated handler, Marigold Foods, at Rochester, Minnesota, which has distribution throughout the marketing area, testified that Marigold competes with Order 68 handlers in all but two of the Minnesota counties in the Order 61 marketing area.

In the Order 60 (Minnesota-North Dakota) marketing area, more than 12 percent of the packaged disposition in May–September 1974 was by plants not regulated under the order. Most of this distribution was from seven Order 68 plants and one Order 76 plant.

In the Order 76 marketing area, 82 percent of the Class I distribution was made by Order 76 handlers during May and September 1974. About seven percent of the Class I distribution was accounted for by handlers regulated under Orders 60 and 61, while handlers regulated under the Nebraska-Western Iowa order accounted for 10 percent of the Class I sales.

In the Order 69 (Duluth-Superior) marketing area, approximately 12 percent of the route sales are from plants not regulated under the order, about half of these originating from Order 68 regulated plants. One Order 68 handler has route sales approximating 30,000 pounds of packaged fluid milk products daily. An Order 61 handler is also making sales in the Order 69 marketing area.

In the Order 68 marketing area, there were route sales by two Order 60 handlers, two Order 61 handlers, and two Order 69 handlers. The proportion of these sales to the total Class I market is relatively small, however.

Overlapping of distribution routes of the handlers regulated under the several orders also occurs in adjacent unregulated areas. A description of handlers' marketing activities in unregulated areas is set forth in detail under Issue No. 3 dealing with extension of the regulated area.

The extent of competition between handlers regulated under the different orders, as indicated above, suggests a significant linkage exists between all of these orders. It is apparent that integration of market structure has occurred to a very large degree between the Minneapolis-St. Paul and the Dairyland markets. In the instance of other markets among the five, a lesser, but significant, sales overlap is noted.

B. *Overlap of Procurement Areas.* The heaviest milk production area in the upper midwest region stretches from southern Wisconsin northerly and northwesterly through Minnesota, including Otter Tail County, Minnesota, and the northeastern corner of Iowa.

Substantial portions of this production area are geographically contained within the regulated marketing areas of the five orders here under consideration. Most of the Grade A milk produced in the region is priced under Federal milk orders, much of it under these five orders.

The degree of procurement overlap is an important factor in market identification, since similarly located producers supplying different markets can be expected to shift to that market with the more favorable price. This could cause disruption to orderly marketing by upsetting supply patterns or cooperative affiliation, particularly when only one coperative association has access to a particular market.

Data on the record show that, with respect to Orders 61 and 68, there is a common procurement area in 15 of the 20 Minnesota counties in the Dairyland marketing area. In addition, both markets draw supplies from four other Minnesota counties and one Wisconsin county. In 1973, 87 percent of the milk supplied to Order 61 came from Minnesota, 11 percent came from Wisconsin, and the remainder came from Iowa.

The Duluth-Superior market draws supplies from seven Wisconsin counties, all of which are part of the Order 68 milkshed (supply area). Similarly, Order 68 shares four out of the six Minnesota counties from which Order 69 draws supplies. Fifty-four percent of the milk supplies for Order 69 come from Minnesota; the remaining 46 percent come from Wisconsin.

The Minnesota-North Dakota procurement area overlaps that of Orders 68 and 76. Order 68 shares 21 Minnesota counties as a common procurement area with

Order 60. In 1973, Order 60 drew 76 percent of its supplies from Minnesota, 22 percent from North Dakota, and two percent from South Dakota.

The procurement area for Order 76 extends into the milksheds of Orders 60, 68, and 61. In all of these instances, however, the overlaps are modest compared to those described above and compared to the procurement overlap between the Eastern South Dakota and Nebraska-Western Iowa markets. The procurement area for the latter market extends throughout most of the Eastern South Dakota marketing area and into southwestern Minnesota. Seventy-four percent of the milk supplied to Order 76 in 1973 came from South Dakota, 20 percent came from Minnesota, and the remainder came from Iowa and North Dakota.

The above data show a high degree of procurement overlap between Orders 68 and 61, Orders 68 and 69, Orders 68 and 60, and Orders 76 and 65. It demonstrates the potential for producer unrest if Federal order uniform prices in the common procurement areas are significantly different or if producers are denied access to their neighbors' markets. This issue will be discussed more below.

C. Market Structure and Accessibility. Substantial changes in the operations of milk handlers and of cooperative associations constitute major modifications of the institutional structure of the markets. These changes, which have been fairly rapid over a period of six years (1969–1974), affect dairy farmers' participation in the returns for milk priced under these orders. Fluid processing plants in these markets have become fewer in number, but generally larger in capacity. The decline in number of plants from 1969 through 1974 is shown in the following table:

Order No.	Number of pooled distributing plants		
	December 1969	September 1974	Change
60	17	5	−12
61	12	7	−5
68	22	16	−6
69	5	4	−1
76	6	4	−2
Total	62	36	−26

The size of cooperative associations in terms of volume of milk marketed also has changed. Several cooperatives now represent a substantial portion of the total milk supply in the five markets. There also are numerous cooperatives handling lesser volumes, particularly on the Minneapolis-St. Paul and Minnesota-North Dakota markets.

In the Southeastern Minnesota-Northern Iowa market, a single cooperative association, Associated Milk Producers, Inc., supplies the largest handler, who processes about 90 percent of the Class I milk pooled under the order. This handler, Marigold Foods, Inc., at Rochester, Minnesota, formerly (in 1968) purchased milk at this plant from ten cooperative associations. At that time, the handler also operated other plants at Austin and Mankato, Minnesota, where milk was received from four other cooperatives.[1] In total, the number of cooperative associations serving the Order 61 area in 1968 was 17, compared to three in September 1974.

In South Dakota, two cooperative associations and a federation of cooperatives supplied the Eastern South Dakota and the Sioux Falls-Mitchell markets prior to their merger in 1965. Presently, one cooperative association, Land O'Lakes, Inc., furnishes the entire supply for the four distributing plants regulated under the Eastern South Dakota market. Land O'Lakes, through a subsidiary, operates the largest of these four plants, accounting for approximately 60 percent of the Class I sales in the marketing area.

The Duluth-Superior market has a supply furnished only by the Twin Ports-Arrowhead Cooperative Dairy, an organization affiliated with Land O'Lakes, Inc. A third cooperative, National Farmers' Organization, was associated with the market in 1972, but subsequently left the market. There are four distributing plans regulated under Order 69. One of them is operated by Land O'Lakes, Inc.

The situation in the Order 60 and 68 markets is substantially different. There were 28 and 34 cooperatives, respectively, in these markets in September 1974. This number includes several relatively small (in terms of members) cooperative associations that market their member milk through the marketing systems of some of the larger cooperatives. In September 1974, there were 16 fully regulated distributing plants under Order 68 and five such plants under Order 60. In addition, there were many pool supply plants associated with each of these markets.

Institutional factors are important in evaluating the effect of separate order regulations compared to a single order. This is illustrated in the comparison of the proportions of milk supplies used in Class I in the several order markets. Specifically, in the Eastern South Dakota, Duluth-Superior, and Southeastern Minnesota-Northern Iowa order markets, there is a substantially higher proportion of supplies used in Class I than in the other two markets, as shown in the following table.

[1] Official notice is taken of the decision issued February 27, 1969 (34 FR 3808).

Class I utilization percentage

	Order 60	Order 61	Order 68	Order 69	Order 76
	Minnesota-North Dakota	Dairyland	Minneapolis-St. Paul	Duluth-Superior	Eastern South Dakota
1970	30	44	43	50	59
1971	27	40	42	52	52
1972	24	44	43	54	48
1973	25	50	40	57	45
1974	22	50	32	60	46
Change 1970–74	−8	+6	−11	+10	−13

The trends in utilization in the separate markets over a period of five years are significant. Orders 61 and 69 have experienced an increase in the percentage of producer milk used in Class I. Because of the buyer-seller arrangements in the three smaller markets, the level of Class I utilization in each of these markets generally can be established by the cooperative association on the basis of a decision as to the quantity of milk that will be pooled under the order. In the Order 61 market, nearly all of the supply is from a single cooperative, Associated Milk Producers, Inc.; likewise, in the Order 69 market, the Twin Ports-Arrowhead cooperative is the only one supplying the market.

The situation in the Eastern South Dakota market is somewhat different, although this market also is supplied by only one cooperative. This market has had a declining percentage use in Class I in recent years.

The effect of different Class I utilizations on returns to producers under the five orders is manifested through the uniform price. The average uniform price for the years of 1970 through 1974 for the five orders is shown in the following table.

	Order 60	Order 61	Order 68	Order 69	Order 76
1970	5.08	5.14	5.19	5.01	5.54
1971	5.19	5.24	5.33	5.26	5.60
1972	5.30	5.51	5.54	5.47	5.76
1973	6.45	6.55	6.58	6.40	6.77
1974	7.46	7.72	7.59	7.74	7.86

From the above table, it is obvious where the additional 1 billion pounds of milk has been pooled; Orders 68 and 60 have absorbed almost all of it. The milk pooled under Orders 61 and 69 has actually decreased during this period.

In view of the preceding considerations, it is apparent that the level of Class I utilization in the Minneapolis-St. Paul market and the Minnesota-North Dakota market more typically represents the impact of the large supplies of Grade A milk available in the region. In contrast, the Class I utilizations in the Order 61 and Order 69 markets reflect a sheltered situation which results from the play of institutional factors and the existence of separate orders.

The change in handlers' and cooperatives' operations has clearly reduced the ability of the four Federal milk orders in their present form to provide dairy farm-

ers with equitable opportunity for participation in market returns. With respect to the Duluth-Superior and Southeastern Minnesota-Northern Iowa markets, each supplied by one principal cooperative, the existence of separate orders results in segregation of returns for producers on an organizational basis. For instance, in March, 1975,[2] Order 69 Class I utilization was 57 percent, compared to the Minneapolis-St. Paul utilization of 31 percent. The Order 69 blend price exceeded the Order 68 blend by 24 cents per hundredweight at central market locations. Only about 2 cents of this difference can be explained by the 4-cent higher Class I differential. It is clear that the main price difference is because of the higher utilization in Order 69.[3]

Producer milk pooled under 5 orders, 1970–74 (1,000,000 pounds)

	Order 60	Order 61	Order 68	Order 69	Order 76	Total
1970	654	464	1,962	186	187	3,453
1971	745	508	2,115	186	228	3,782
1972	708	460	2,314	181	263	4,011
1973	768	470	2,548	156	281	4,223
1974	814	435	2,835	143	279	4,506

It is readily apparent that a substantial change in price relationship has occurred during this five year period. With respect to Orders 61 and 68, for instance, it is noted that at the beginning of this period, the blend price under Order 68 exceeded the Order 61 price by 5 cents per hundredweight. By 1974, the Order 61 blend price exceeded the Order 68 blend price by 13 cents.

A comparison of blend prices under Orders 68 and 69 shows that in 1970 the Order 68 price exceeded the Order 69 price by 18 cents. By 1974, the situation was reversed, with the Order 69 price exceeding the Order 68 price by 15 cents.

Although substantial differences exist between the blend prices of Orders 60, 68, and 706, testimony at the hearing suggests that the actual prices to producers do not reflect the magnitude of these differences due to reblending of proceeds by cooperative associations with producers in two or more of these markets.

CONCLUSIONS

The facts discussed above lead to several relevant questions in determining the case for merger:

(1) Why has the relationship among these 5 markets changed?

(2) What effect do the changes have on producers marketing milk in this region? and

(3) What form of regulation will best insure orderly marketing for the future?

Part of the reason for the change in Class I utilization and prices to producers is to be found in the influx of newly-converted Grade A supplies pooled under the orders. The total supplies pooled under the five orders increased from 3.5 billion pounds in 1970 to 4.5 billion pounds in 1974. The following table shows how this milk was divided among the five markets.

A similar comparison of uniform prices can be made between the Order 61 and Order 68 markets, where Class I and Class II prices in the two markets are identical. The Order 61 uniform price has been consistently higher since the year 1972. In March and April 1975, the months of flush production, the differences were 17 cents and 22 cents per hundredweight, respectively. In these two months, the Class I utilization under Order 68 was 31 and 30 percent, respectively, while under Order 61 the corresponding percentages were 51 and 54 percent. These differences are significant in an appraisal of the degree to which orderly marketing conditions exist.

The Eastern South Dakota order market, also completely supplied by a single cooperative, has a different milk supply situation than the Dairyland and Duluth-Superior markets. In the case of the latter two markets, there is a significant overlap of milk supply with the Order 68 market. The Eastern South Dakota market, on the other hand, does not obtain substantial amounts of Grade A milk in Minnesota. Its principal supply of Grade A milk comes from within the marketing area and in relatively close proximity to the principal cities therein, i.e., Aberdeen and Watertown in the northern sector of the market, and Sioux Falls, Brookings, Huron, Mitchell, and Yankton, in the southern sector of the market.

Thus, where milk in the heavy production area of Wisconsin and Minnesota (described earlier) is in close proximity to handlers in the territory herein proposed for merger, the Grade A milk supply for much of the Eastern South Dakota market, as well as the handlers' plants in this market, are somewhat removed from such heavy milk production area.

For the four Orders 60, 61, 68, and 69, it must be concluded that present regulation is not resulting in an equitable distribution of market returns, considering that the milk of Grade A dairy farmers throughout most parts of the heavy milk production area is available either to several or all of the four markets. Within the new marketing structures that have developed among suppliers and handlers, competition for fluid outlets has resulted in disorderly marketing conditions for dairy farmers associated with these markets.

It is not uncommon that supply plants associated with one or another of the markets here under consideration have lost their Class I outlets to competition and have been forced, because of the limited pooling base under the order involved, to seek pooling status under other orders. In many situations, alternative outlets can be secured only in distant markets. The milk involved may displace traditional supplies in such markets which then may necessarily have to be disposed of for manufacturing uses. In other instances, the milk has gained pooling status in distant markets without significant performance through loopholes in the structure of the pooling provisions of the orders covering such markets. In usual circumstances, pooling in the distant market results in a lesser return for this upper midwestern milk than would result if the milk could have been pooled locally.

Several plants in Minnesota, formerly regulated by one of the four orders, now are pooled under the Federal milk orders regulating the handling of milk in the Greater Kansas City, Southern Illinois, and Des Moines, Iowa, marketing areas. In other cases, the milk of groups of Minnesota producers has been moved by direct pickup at the farm to the St. Louis Federal order market and to other markets as a means of sharing in the Class I market.

Examples of the changes in plants associated with the Southeastern Minnesota-Northern Iowa (Dairyland) market illustrate the situations just described. In 1970, five supply plants were pooled on the Dairyland market. Two plants were operated by Land O'Lakes, Inc., (at Mountain Lake and Pine Island, Minnesota), one by the Pigeon Falls Cooperative Creamery (at Pigeon Falls, Wisconsin), and one by the A–G Cooperative Creamery (at Arcadia, Wisconsin). Also, at this time, there were as many as seven cooperative associations, including Associated Milk Producers, Inc., supplying milk to proprietary handlers regulated under the Dairyland order. AMPI marketings were by shipment from member producer farms directly to processing plants.

In September 1971, the Land O'Lakes Pine Island plant ceased association with the Dairyland market and was pooled on the Southern Illinois Order No. 32. A further change in the supply arrangements occurred in July 1973, when AMPI qualified a pool supply plant at Owatonna, Minnesota.

In 1974, there was a break in the arrangement by which AMPI had marketed the milk of the Mid-America Twin Lakes

[2] Official notice is taken of data for these markets in Federal Milk Order Statistics, January–May 1975, USDA, Agricultural Marketing Service.

[3] In some prior periods, such price comparisons would involve the different Class II price formulas under the two orders. Prior to August 1, 1974, when the Duluth-Superior and Minneapolis-St. Paul orders were amended to establish a three class system, the Duluth-Superior Class II price was different from the Minneapolis-St. Paul market. Such Class II price, based on a butter-powder formula, was $1.43 per hundredweight lower than the Order 68 Class II price in February 1974. As a result, the Order 69 uniform price was lower than the Order 68 uniform price in spite of a 55 percent Class I utilization in Order 69 compared to a 30 percent Class I utilization under Order 68.

plant, Elba Cooperative Creamery at Elba, Minnesota, and the milk of Elgin Cooperative of Elgin, Minnesota. The milk of these cooperatives had been included in the total supply furnished to Marigold Foods at Rochester, Minnesota. In the latter half of 1974, this marketing arrangement was discontinued. As stated by the AMPI witness, the cooperative "* * * replaced that displaced volume with producer volume of our own" when the Alma, Wisconsin, plant of AMPI was qualified for pooling under Order 61 in October 1974.

It is to be expected that this type of evolution of market structure may occur in any case where a single cooperative association has sufficient member milk to supply a relatively small, or medium, volume market. As indicated elsewhere, the Dairyland market is in this respect similar to the Duluth-Superior and Eastern South Dakota Federal order markets.

Contrasting to this situation is the Minneapolis-St. Paul market, where there is a number of cooperative and handler sources of supply. Presently, 34 cooperative associations have milk pooled under that order. This market pool has absorbed some of the supplies that once were associated with the Order 61 or Order 69 markets. Two of the supply plants that previously qualified on the Order 61 market now are regulated on the Order 68 market. A group of producer members of the National Farmers Organization that were previously identified with the Duluth-Superior market changed their market so that their milk now is pooled under the Minneapolis-St. Paul order. In other instances, plants not previously associated with any Federal order market have become pool plants under Order 68.

These aforedescribed marketing conditions, including changes in the market structure, indicate a need for modification of the form of order regulation. The increase in the size of cooperative and proprietary handlers' operations, not only within individual markets but also on a intermarket basis, has made obsolete a continuation of the four separate orders, and calls for some restructuring of the Eastern South Dakota marketing area. The separate regulations for Orders 60, 61, 68, and 69 are not achieving a proper distribution of returns of the fluid markets among the milk supplies immediately available to these markets. As a result, there are disparities in conditions affecting producers marketing their milk under the several orders which have tended to promote dissension among producer groups and uneconomical marketing patterns by cooperative associations.

The situation unquestionably will become increasingly severe as the transition from manufacturing grade milk to Grade A milk progresses.

In Wisconsin, Grade A marketings increased from 7.5 billion pounds in 1966 to 10.7 billion pounds in 1974. In Minnesota, Grade A marketings nearly doubled, from 1.7 billion in 1966 to 3.4 billion in 1974. Grade A milk and cream marketings in these and other specified states, for the years 1966, 1969 (the year that Dairyland became effective), 1970, and 1974 are shown in the following table:

Grade A milk and cream marketed by farmers [4]

[In million pounds]

State	1966	1969	1970	1974
Wisconsin	7,461	8,889	9,628	10,677
Minnesota	1,690	2,306	2,677	3,356
Iowa	1,105	1,405	1,404	1,647
North Dakota	220	201	227	319
South Dakota	204	202	218	305
Total	10,680	13,003	14,154	16,304

[4] Official notice is taken of the annual publications of "Milk Production, Disposition, Income" by Crop Reporting Board, S.R.S., USDA, covering the periods 1966 through 1974. Estimates of quantities of Grade A milk are derived by applying percentage figures to total marketings.

In total, the increase in Grade A marketings for these States, 1966-74, was 5.6 billion pounds, an average increase of 703 million pounds per year.

The potential for development of an even larger Grade A milk supply is indicated in the following table showing the proportion of the milk production in these states that does not now qualify as Grade A. In Minnesota, for example, about 63 percent of the 9 billion pounds of milk marketed in 1974 was manufacturing grade.

State	Milk and cream marketed in 1974(million pounds)	Percent non Grade A
Wisconsin	17,795	40
Minnesota	9,070	63
North Dakota	910	65
South Dakota	1,385	78
Iowa	3,660	55

Potential milk supplies for these markets from the State of Minnesota alone are indicated by a 1974 annual milk production of over 9 million pounds compared to a total order receipts of 4.5 billion pounds under the five orders. In the general area of Wisconsin from which these orders draw milk supplies (Crop Reporting Districts 1 and 4), total milk production in 1974 was close to 4.5 billion pounds, of which more than half was not pooled under any Federal order. While the volume of production in North and South Dakota is much smaller, the proportion of manufacturing grade milk is even larger. Thus, there is a very large quantity of potentially Grade A milk supplies no more distant than milk presently pooled under these orders. It can be expected there will be a continuing tendency for many of the dairy farmers producing manufacturing grade milk to improve their operations to attain Grade A qualification.

It is expected that cooperative associations and handlers will seek to pool under the upper Midwest Federal order markets most of the increase in the production of Grade A milk in the area. This cannot be accomplished under the framework of the existing orders, however, because the growth of Grade A milk supplies will be much greater than the growth of fluid requirements of these markets. Grade A milk pooled on the five markets increased 38 percent from December 1969 to December 1974, but the quantity used in Class I increased only 3 percent.

Because of this situation, the coordination of order pricing and pooling is vitally important in this area. Each of the markets here under consideration is affected by this supply situation, although in certain markets this is obscured by institutional factors that inhibit free adjustment of supplies among the markets.

The incentive for dairy farmers is to pool their milk where the highest return is available. With equal access to the respective markets, this would result in an equalization of returns under the several orders. If such balancing of milk supplies among the markets occurred, orderly marketing conditions would be manifested by the unfettered association of milk supplies according to price incentives. This, however, is not the case since two of the markets have seemingly absorbed a disproportionate share of the area milk supplies.

In addition to removing the basic problem of sharing the returns among all of the Grade A producers in this area, the proposed merged order will promote greater efficiency in the moving and handling of milk. Present efforts of cooperative associations and handlers to pool on these markets the milk produced in associated production areas involve movements unrelated to economical supply systems for a particular market. This is true also when supplies produced in this area are pooled on other more distant markets. The proposed merged order will provide a broad basis for pooling Grade A milk supplies produced within and close to the proposed marketing area, and will obviate shipments of milk for the sole purpose of attaining pooling status.

The merger action will also reduce uneconomic milk handling resulting from cooperatives attempting to maintain or adjust levels of Class I utilization in individual markets. Circumstances where a cooperative association attempts to balance milk supplies and Class I utilization levels between two markets, or a cooperative handling the major supply in a single market arranges to limit supply, foster uneconomical supply arrangements. Because the merged order would equalize Class I utilization over the entire area, the incidence of uneconomic handling of milk would be minimized.

Opposition to Inclusion of the Duluth-Superior Market

In opposition to merging the Duluth-Superior market with the other markets, a representative of the Twin Ports-Arrowhead Cooperative Dairy stated that

this market is isolated geographically and has its own special supply of milk. He contended that the market's production area has a uniqueness due to such factors as a short growing season and lack of alternative agricultural enterprises, all of which result in production costs higher than other areas to the south supplying the Twin Cities and other Minnesota markets.

Except for institutional arrangements, which can affect the sources of a market's milk supply, alternative milk supplies in the heavy milk production region are amply available to the Duluth-Superior market.

The Duluth-Superior supply area in Minnesota and Wisconsin abuts and, in some measure, overlaps the heavy milk production region described elsewhere in these findings: About 32 percent of the milk pooled on the Order 69 market in December 1973 was produced in an east-west corridor of counties contiguous to the Order 69 marketing area on the south (Pine County, Minnesota, and Burnett, Washburn, and Sawyer Counties, Wisconsin.) This area is adjacent to the heavy production area in Polk and Barron Counties, Wisconsin, where a substantial volume of the milk produced is pooled under Order 68. As pointed out earlier, there are a number of counties in which both markets have supplies. Barring institutional factors, there is no apparent reason why the ample supplies described should not be as equally and economically available to the Duluth-Superior market as to the Minneapolis-St. Paul market. In the latter market, the volume of milk pooled is generally in excess of the market's fluid needs; therefore, not all such supplies are bound to that market by a need to meet fluid demands.

Opponents argue that separate regulation is needed for the Duluth-Superior area to maintain a higher price there than in areas to the south. However, opponents ignore the fact that substantial supplies of milk in this same area are now being pooled under the Minneapolis-St. Paul order at a substantially lower price. For instance, data introduced at the hearing show that in December 1973, more milk from Pine County, Minnesota—the biggest supply county for the Duluth-Superior market—was being pooled under Order 68 than under Order 69. In that month, 2.44 million pounds of milk were pooled on the Minneapolis-St. Paul market compared to 2.38 million pounds that were pooled on the Duluth-Superior market. Similarly, with respect to Bayfield and Ashland Counties in Wisconsin, which are part of the Duluth-Superior marketing area, more milk from those counties went to Order 68 than to Order 69.

Equity can only be achieved if all producers in this common supply area share equally in the proceeds of the several fluid markets. Accordingly, the declared policy of Act, to assure an adequate supply and to provide orderly marketing, can most appropriately be carried out by inclusion of the Duluth-Superior order in the Upper Midwest marketing area.

SEPARATE REGULATION FOR THE EASTERN SOUTH DAKOTA MARKET

The southern portion of the Eastern South Dakota order market should not be included in the merged order. However, the northern tier of five counties (McPherson, Walworth, Edmunds, Brown, and Day, referred to throughout this discussion as the "five-county area"), should be incorporated into the new Upper Midwest order marketing area. The remaining portion of the Order 76 marketing area should be extended to include the presently unregulated South Dakota counties of Brookings and Deuel, and the presently unregulated Minnesota counties of Lincoln, Pipestone, and Nobles. This extension is discussed elsewhere under the subject "additional territory to be regulated".

Testimony of milk dealers and producer groups generally opposed the merger of the Order 76 market with the other four order markets. The only expression of support for merger of Order 76 came from the National Farmers Organization.

It was the general consensus of most witnesses testifying on this matter that Order 76 was more integrated with the Nebraska-Western Iowa order from a standpoint of procurement and Class I sales than with other markets here considered for merging and should not, therefore, be included in this merger. A factor relied upon by Land O'Lakes in opposing the inclusion of the Eastern South Dakota market was the intermingling of producers with those for the Nebraska-Western Iowa market.

The Eastern South Dakota marketing area presently encompasses most of the eastern one-third of South Dakota. It is an elongated marketing area extending from the North Dakota border to the Nebraska state line, a distance, north-south, of about 270 miles.

The portion of the Eastern South Dakota marketing area herein proposed to be merged with the Minnesota markets is comprised of a tier of counties joined on the north with the Order 60 marketing area. An extension of this corridor of counties east to the Minnesota border also covers an area of three South Dakota counties, Marshall, Roberts, and Grant, which now are part of the Order 60 marketing area.

The principal city in the five-county area proposed to be annexed to the Upper Midwest marketing area is Aberdeen with a 1970 population of 26,476. Aberdeen, in Brown County, is about 40 miles south of the North Dakota state line and the Order 60 marketing area. It is the only large population center throughout the five-county area.

Aberdeen is located 180 miles from the Fargo-Moorhead complex in the Order 60 marketing area, and 210 miles from Sioux Falls, the largest city in the Order 76 marketing area.

The marketing of Grade A milk in the five-county area in the northern sector of the Order 76 market is closely integrated with the Order 60 marketing area. The three South Dakota counties regulated under Order 60, with the five herewith proposed for annexation with the Upper Midwest market, are a part of the supply area for Grade A milk pooled on the Order 60 market. Also, some milk supplies in the adjoining North Dakota counties in the Order 60 marketing area are pooled on the Order 76 market. Local handlers supplying fluid milk products in the northern area of the Order 76 market are the DeVries Dairy, Inc., located in Aberdeen, in Brown County, and Blue Valley Dairy, a producer-handler, located at Hoven, in Walworth County. The fluid milk sales of the two handlers do not extend outside the present Order 76 marketing area.

The Cass Clay Creamery, Inc., operates a partially regulated distributing plant at Mandan, North Dakota, and a distributing plant regulated under Order 60 at Fargo, North Dakota. These bottling plants distribute directly, and through jobbers, into the five-county area. The Mandan plant, by virtue of its sales into both the Order 76 and Order 60 marketing areas, now is partially regulated under both such orders. Cass Clay also operates a butter-powder manufacturing operation at Fargo, North Dakota, and a cheese manufacturing plant at Aberdeen, South Dakota.

The Fairmont Foods Company operates a distributing plant at Moorhead, Minnesota, pooled under Order 60, and a distributing plant in Minneapolis, Minnesota, pooled under Order 68. From these plants, fluid milk products are distributed into the Order 76 marketing area as well as in Orders 60 and 68.

In the remaining territory of the Order 76 marketing area proposed to be left out of this merger are located the other distributing plants pooled under Order 76. These are: Culhanes Dairy, Mitchell, South Dakota; and Terrace Park Dairy and Lakeside Dairy, both located in Sioux Falls.

The representative of Lakeside Diary testified to having about 30 percent of the total Order 76 Class I market and Terrace Park Dairy about 60 percent. Both handlers distribute fluid milk products into the Nebraska-Western Iowa market. The Lakeside handler's distribution in the Order 65 market is confined to the Sioux City area.

Sioux Falls, (Minnehaha and Lincoln Counties), the largest city in South Dakota (urbanized area population of 75,000), is located in the southeast corner of the State. Sioux Falls is about 60 miles from the Nebraska border and 85 miles from Sioux City, Iowa (urbanized area population of 95,937), one of the principal cities in the Nebraska-Western Iowa marketing area.

In view of the significant sales and procurement relationship with the Nebraska-Western Iowa market, it is concluded that this area should be left out of the Upper Midwest marketing area and reserved for later consideration for merger with the Nebraska-Western Iowa market. The northern sector of the present Eastern South Dakota marketing area is an integral part of the board Upper Midwest market have being considered. An appropriate price level for

this area can be readily adopted to the structure for the merged order. This matter is discussed in more detail under item 4(c) of the findings.

3. *Additional territory to be regulated.* The merged Upper Midwest marketing area should include additional territory, presently unregulated, comprised of: 15 Wisconsin counties, and the portions of St. Croix and Pierce Counties, Wisconsin, that are not now a part of the Order 68 marketing area; and 18 counties in Minnesota and the portion of St. Louis County that is not now a part of the Order 69 marketing area. Three Minnesota counties (Lincoln, Pipestone, and Nobles) and two South Dakota counties (Brookings and Deuel) should be included in the Eastern South Dakota marketing area.

Reasons advanced by proponents for regulation of such territory were:

a. A significant share of the Class I sales in the unregulated territory is made by regulated handlers in competition with unregulated handlers;

b. Although the unregulated handlers have a high Class I utilization, they do not buy milk on a classified use basis. Thus, they have a competitive cost advantage compared to regulated handlers;

c. The Federal order pools carry the burden of reserve supplies that unregulated handlers depend on and purchase to supplement their regular sources during the short production season; and

d. The unregulated territory is contiguous to the present marketing area.

ADDITIONAL WISCONSIN TERRITORY

The Wisconsin territory to be included in the Upper Midwest marketing area (referred throughout these findings as the 17 Wisconsin counties) includes all but one (Jackson County) of the 18 counties proposed for regulation as set forth in the hearing notice. The 17 Wisconsin counties included in the merged and expanded marketing area are:

Barron	Polk
Buffalo	Price
Burnett	Rusk
Chippewa	Sawyer
Clark	St. Croix (remainder
Dunn	Taylor
Eau Claire	Trempealeau
Pepin	Washburn
Pierce (remainder)	

The total 1970 population of the 17 Wisconsin counties including all of Pierce and St. Croix, is 415,747. Eau Claire County with 67,219 persons, Chippewa with 47,717, and St. Croix with 34,354, (1970 U.S. Census of Population), are the three counties with largest population. A portion of St. Croix County is now regulated under Order 68. The three largest cities in these 17 counties are Eau Claire (about 45,000), Chippewa Falls (12,351), and Menomonie (11,275).

Three producer organizations supplying one or more of the five fluid markets proposed the regulation of additional territory in Wisconsin, Mid-America Dairymen, Inc., proposed that all the foregoing 17 Wisconsin counties, together with Jackson County, be included in the marketing area of a single order, combining Orders 60, 61, and 68. The National Farmers Organization, in connection with its proposal to combine all five markets into a single regulation, proposed inclusion of 13 of the 18 Wisconsin counties noticed in the hearing proposal (excluding Clark, Jackson, Price, Rusk, and Taylor).

Land O'Lakes, Inc., initially proposed the inclusion of all but Chippewa County of the 18 Wisconsin counties proposed for regulation; such proposal was included in the notice of hearing. In its post-hearing brief, however, this cooperative withdrew its support for the regulation of seven of the 18 Wisconsin counties, i.e., Clark, Jackson, Price, Rusk, Sawyer, Taylor, and Trempealeau. The cooperative, in its brief, argued that Order 30 handlers market a greater volume of Class I milk in these counties than Order 68 handlers. The cooperative contends, therefore, that consideration should be given to their regulation under Order 30.

Opposition to regulation of all 18 Wisconsin counties was stated in testimony in behalf of the unregulated milk handlers now marketing Class I milk there.

This additional territory (17 counties) should be brought under regulation to implement continuing orderly marketing for dairy farmers supplying regulated handlers, as well as unregulated handlers, marketing milk therein. Milk is disposed of in this territory by regulated handlers on routes as well as in the form of bulk supplemental supplies to unregulated handlers.

In the 17-county Wisconsin area, there is milk distribution by handlers regulated under three of the five orders (Orders 61, 68, and 69), several milk handlers regulated under the Chicago Regional order, and a number of unregulated milk plants. It is established that such unregulated handlers receive approximately 8.1 million pounds of milk monthly.

Ten of the 17 counties (Price, Sawyer, Washburn, Burnett, Polk, St. Croix, Pierce, Pepin, Buffalo, and Trempealeau) join the present marketing areas of either Order 61, 68, or 69. Geographically, the ten counties form the northern, western, and part of the southern extremities of the Wisconsin territory proposed to be regulated.

Adjacent thereto, in Barron and Eau Claire counties, respectively, are located the two principal unregulated handlers in the proposed Wisconsin territory. These are the Dolly Madison Dairies, Inc., at Eau Claire (Eau Claire County), and Gustafson Ice Cream and Dairy Company at Rice Lake (Barron County). The two unregulated handlers have substantial fluid milk sales in the territory made up of the 10 Wisconsin counties that are contiguous to the present regulated markets.

The Dolly Madison Dairies now is a partially regulated handler under Orders 68, 69, and 30 by virtue of sales into the respective marketing areas; the Gustafson Ice Cream and Dairy Company is partially regulated under Order 69. The primary business of these two handlers is fluid milk products disposition. Together, they have wide distribution of fluid milk products throughout the 17-county Wisconsin area.

Handlers now regulated under Orders 61, 68, and 69, respectively, dispose of 50 percent or more of the total fluid milk disposition in St. Croix (the unregulated portion), Polk, Burnett, and Buffalo Counties. The Gustafson Ice Cream and Dairy Company markets about 20 percent of the plant's Class I milk disposition in these four counties. The inclusion of the four counties in the regulated area, therefore, would result, under proposed pooling standards, in the full regulation of the Gustafson plant.

The Gustafson plant receives milk from about 52 Grade A dairy farmers located in the surrounding production area. About 27 million pounds of milk is received annually from such dairy farmers, roughly 90 percent of which is disposed of in the form of fluid milk products. This handler also purchases annually about 276,000 pounds of milk from a plant located in Rice Lake and purchases certain fluid milk products from an Order 68 regulated plant. Gustafson distributes fluid milk products in all but one (Pepin) of the 17 Wisconsin counties herein proposed for regulation.

The Dolly Madison plant also has a large proportion of its fluid milk products disposition in the 17-county area. About 7.5 percent of Dolly Madison's sales are disposed of in marketing areas of Federal Orders 68, 69, and 30, and roughly 83 percent of its sales are disposed of in 16 of the 17 unregulated counties adopted herein for regulation. It has no fluid milk sales in Burnett County, Wisconsin.

Dolly Madison Dairies is a division of Marigold Foods, Inc., of Rochester Minnesota. The bottling operation receives approximately 50 million pounds of milk annually from about 100 Grade A bulk producers located in the surrounding production area. Close to 90 percent of the milk handled is disposed of in the form of fluid milk products. In addition to milk purchased from dairy farmers, Dolly Madison purchases regulated milk, both bulk and packaged, equal to about 10 percent of its total annual fluid milk sales. It purchases annually about 4 million pounds of bulk skim milk pooled under Order 68 from Mid-American Dairymen, Inc. It also purchases packaged fluid milk products from Marigold Foods, Rochester, Minnesota, an Order 61 pool plant.

The inclusion of the 17 Wisconsin county territory in the merged and extended marketing area will bring under full regulation several additional unregulated distributors whose sales areas are more localized in scope than the Dolly Madison and Gustafson operations.

The Knapp Creamery Company, located at Knapp (Dunn County), Wisconsin, is a bottling plant that receives about 6 million pounds annually from 12 Grade A producers. About 70 percent of this Grade A milk is disposed of as Class I fluid milk products. The Knapp Creamery Company markets Class I products in Dunn County, in St. Croix County (abutting Dunn County on the

west), and in Pepin County, which abuts the Order 61 marketing area.

The Hayward Dairy, a bottling plant located in Hayward (Sawyer County), Wisconsin, purchases about 2 million pounds of milk annually from two Grade A producers. It also purchases packaged milk from the Gustafson Ice Cream and Dairy Company. While the fluid milk distribution of this handler is largely confined to Sawyer County, some sales are made in the Duluth-Superior market. As a consequence, the plant is a partially regulated distributing plant under Order 69.

Hillside Dairy, located in Cadott (Chippewa County), Wisconsin, receives about 2 million pounds of milk annually from three Grade A dairy farmers. The milk is utilized principally in packaged fluid milk products distributed in Chippewa County through dairy stores owned by Hillside Dairy.

The Hoffman Dairy, located in the town of Thorp in Clark County, Wisconsin, receives about 1 million pounds annually from one producer, of which approximately 400 thousand pounds is packaged in fluid form for route disposition. Additional packaged milk in quantities not specified on the record are purchased from Dolly Madison Dairies. Hoffman Dairy distributes Class I products in Clark, Chippewa, and Taylor Counties, Wisconsin.

A primary consideration in the need for extending regulation to the 17-county territory included herein is the lack of uniform pricing for milk marketed there. Handlers now regulated under the present orders operate in competition with unregulated handlers not subject to a classified price plan in the proposed area of extension. The unregulated handlers distributing milk therein pay their farmers prices unrelated to the class use value of their milk, even though a high proportion of their milk receipts is utilized for Class I disposition. Because of this, the unregulated handlers achieve a raw product cost well below the cost to regulated handlers for the same type of utilization.

This cost advantage is greatest when an unregulated handler limits his Grade A receipts to accommodate only his immediate Class I needs and relies on supplementary milk supplies from plants and/or cooperatives during the seasonally short production months of the year. The handler likely must pay a price to his dairy farmers that matches, or betters, the uniform price that regulated handlers are paying. Such pay price of the unregulated handler, however, usually is substantially lower than the classified use value that regulated handlers would be required to pay for the same utilization.

Prices paid by Dolly Madison during January through September 1974, compared with prices based on Order 68 class values, as adjusted for the Eau Claire location, show that in only one month of the 9 months was the Dolly Madison pay price above the estimated class use value. In the remaining eight months, January through August 1974, the actual producer pay price of this handler ranged from 5 cents to $1.29 below the estimated class use value. These price differences over the 9-month period averaged approximately 50 cents below the class use value of the milk.

Similarly, the Gustafson pay price was 2 cents higher than the classified use value in September 1974, but for the months of January through August 1974, was 5 cents to $1.28 below the class use value at the Rice Lake location. The pay prices on the average were 49 cents per hundredweight lower than the class use value during this 9-month period.

A representative of the Dolly Madison Dairies, testifying also in behalf of six other unregulated handlers, opposed the inclusion of the proposed 18-county Wisconsin territory. He contended that there is no specific evidence of disorderly marketing conditions or any serious competitive problems in milk procurement between unregulated handlers and regulated handlers. Incorporating the unregulated Wisconsin territory into the marketing area, he said, would subject them to additional raw product procurement costs because of equalization payments to the order pool for the classified use value of their milk.

The pricing policy of the Dolly Madison and Gustafson, according to this spokesman, is to pay a flat price determined from the blend prices paid in the adjoining Federal order markets. The pay prices of the two handlers, thus, are not based upon their Class I utilization, which is 90 percent or more. The witness stated that, nevertheless, Dolly Madison pays its dairy farmers equal to or better than the Order 68, 69, or 30 blend prices and, accordingly, such dairy farmers would have nothing to gain by the regulation.

It was also contended that marketing conditions are not significantly different than shown in the 1968 hearing that considered expansion of the Order 68 marketing area to include the Wisconsin counties of Polk, St. Croix, Pierce, Dunn, Barron, Chippewa, and Eau Claire. Of these seven Wisconsin counties, only certain townships in Pierce and St. Croix Counties were incorporated in the Order 68 marketing area. It was found that regulated handlers had a substantial portion of the sales in such added areas. Official notice is taken herewith of the decision of the Under Secretary issued February 27, 1969 (34 FR 3833) on the aforesaid hearing record in which percentages of Class I sales by regulated handlers were cited for four Wisconsin counties.

The change since the 1968 hearing in Class I distribution in these four counties by regulated handlers, as per the November 1974 record, are shown in the following table:

Estimated percentage of Class I sales by regulated handlers

	1968 estimates	1974 estimates
Barron	2-8	4-10
Dunn	3-6	9-25
Eau Claire	3-15	16-28
Chippewa	2-3	29-45

In certain other counties not considered in the 1968 proceeding, but considered on this record, regulated handlers have the majority of total Class I marketings. In this respect, this record concerns a broader area of the Wisconsin area adjoining the present marketing area than in the 1968 proceeding, and the evidence indicates a more substantial relationship between marketing in this area and the merged markets than that described in the 1968 record.

Because fluid milk sales vary from day to day (primarily with the day of the week) and from month to month, and milk production varies seasonally, a reserve of production over the average daily volume of fluid sales is necessary to assure a reliable supply. The quantity of reserve needed is proportionate to the volume of Class I disposition of the handler or the market. Milk not actually utilized in Class I disposition, and which is necessarily classified as Class II or Class III milk, returns to producers only the lower value commensurate with such use.

A uniform price plan applicable to all handlerrs offering milk for sale in the expanded area should be made effective by bringing this area within the boundaries of the marketing area of the merged and expanded order. This will tend to stabilize and improve marketing conditions in the specified areas.

A witness for the Central Milk Sales Agency (an association of seven cooperatives, all of which operate pool supply plants under the Chicago Regional Order No. 30) testified in opposition to regulation of additional Wisconsin territory under the merged order. The principal reason given was that the merged order would not provide a suitable pricing plan in the proposed 18-county Wisconsin area, particularly in relation to the Order 30 Chicago Regional Federal order market.

In its post-hearing brief, however, CMSA stated that seven of the proposed Wisconsin counties, Burnett, Polk, St. Croix, Pierce, Dunn, Pepin, and Buffalo, should be included in the Order 68 marketing area. The association brief opposed the expansion of the order to the other 11 Wisconsin counties (Sawyer, Rusk, Chippewa, Eau Claire, Trempealeau, Jackson, Clark, Taylor, Price, Washburn, and Barron), stating that regulation of the latter 11 counties (which constitutes an area where a substantial share of fluid milk sales are made by seven unregulated handlers) should be delayed pending a hearing to consider the regulation of the area under the Chicago Regional order.

With respect to this 11-county area, the association argues that distribution by Order 30 handlers exceeds the volume of distribution by Order 68 handlers in Price, Taylor, Clark, Jackson, and Trempealeau Counties. They reason that inclusion of these five counties under the Chicago Regional order would subject the Dolly Madison plant to full regulation, and inclusion of additional counties where Dolly Madison has Class I sales would regulate the Gustafson operation.

On the other hand, the association's request that seven Wisconsin counties be included in the Order 68 marketing area would result in regulation of the Gustafson Ice Cream and Dairy Company, and probably the Dolly Madison plant, under Order 68. The seven counties proposed by the association include about 30 percent of Gustafson's Class I milk distribution and about 16 percent of the Class I disposition of the Dolly Madison plant. Under the terms of the merged order, a distributing plant with 15 percent route disposition in the marketing area becomes a fully regulated pool plant.

An official of the Consolidated Badger Cooperative, with membership under the Chicago Regional order, requested that 10 Wisconsin counties, Sawyer, Barron, Rusk, Chippewa, Eau Claire, Trempealeau, Jackson, Clark, Taylor, and Price, not be regulated under the merged order. His expressed reasons were that a substantial portion of the milk consumed in the 10 counties, together with the unregulated portions of Wood and Marathon Counties, is already subject to Order 30 regulation; more than 1300 dairy producers in all 12 counties participate in the Order 30 program; and that regulation under Order 30 of all handlers in the 12 counties would provide for greater equity among both handlers and producers.

The factors cited by the Consolidated Badger representative do not present any material considerations not already dealt with, and, except for Jackson County, the requests for exclusion from regulation of the specified Wisconsin counties are denied.

Jackson County should be excluded from the marketing area of the merged order. This is the only county among the 18 wherein a majority of the fluid milk sales are made by Order 30 handlers. Moreover, the extension of regulation under the merged order to Jackson County alone, in contrast with the other Wisconsin counties proposed for regulation, might be such that a single milk distributor, located therein and already regulated under the Chicago Regional order, would instead be regulated under the Upper Midwest order.

The Thomas Brothers Dairy Company at Black River Falls (Jackson County), a distributing plant pooled under the Chicago Regional order, has a majority of the sales of fluid milk products in Jackson County. This handler's sales are generally localized in character, although some fluid milk product distribution is made by this handler in certain communities in Eau Claire, Chippewa, Clark, and Trempealeau Counties.

The class prices under the merged order and the Chicago Regional order would be identical at the Black River Falls location. Extension of the marketing area into Jackson County is not necessary to the full regulation of the presently unregulated handlers in northwestern Wisconsin. Consequently, no purpose would be served by the inclusion of Jackson County in the marketing area. Moreover, the majority of the Grade A milk produced in Jackson County is now priced under the Chicago Regional order. Thus, it would be more appropriate that the Black River Falls handler remain regulated in the Chicago market, where his major milk procurement competition is.

ADDITIONAL MINNESOTA AND SOUTH DAKOTA TERRITORY TO BE REGULATED

Several proposals by cooperative associations would include all of the 22 unregulated Minnesota counties and two South Dakota counties in a regulated area, either a combination of all five markets into a single regulation or in several combinations of markets.

The unregulated territory in northeast Minnesota is a 10-county area between the marketing areas of the Minnesota-North Dakota order on the west, the Minneapolis-St. Paul and Duluth-Superior orders on the east, and the Canadian boundary on the north. In southwest Minnesota, there are 11 unregulated counties between the marketing areas of the Minnesota-North Dakota and Eastern South Dakota orders on the west and the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders on the east. In the extreme southeast of the state, Houston County is unregulated.

NORTHEASTERN MINNESOTA

Ten counties in northeastern Minnesota were proposed by various parties as extensions of either the merged marketing area or the Duluth-Superior marketing area. These counties are: Aitkin, Cass, Cook, Crow Wing, Itasca, Koochiching, Lake, Morrison, St. Louis, and Todd.

This area had a population of 302,165 in 1970. This figure does not include Duluth in St. Louis County, which is part of the Order 69 marketing area and which has a population over 105,000. In April, 1974, regulated handlers under Orders 60 and 68 distributed about 1.1 million pounds of fluid milk products into these unregulated northeastern counties.

Proposals by Land O'Lakes, Inc., and NFO would extend regulation to eight of the northeastern Minnesota unregulated counties (excluding Lake and Cook). In its post hearing brief, Land O'Lakes modified its proposal, urging that the counties of Cass, Todd, Crow Wing, Morrison, and Aitkin be included in any merged order, and the counties of Koochiching, Itasca, St. Louis, Lake, and Cook be added to the Order 69 marketing area or, in the alternative, to the merged marketing area, if the Duluth-Superior market is included. Mid-America Dairymen, Inc., had proposed for the hearing the regulation of Todd, Morrison, Aitkin, Cass, and Crow Wing Counties, but held in its post hearing brief that the merged order should include all of the Minnesota unregulated counties except Koochiching, Itasca, Lake, and Cook.

The Twin Ports-Arrowhead Cooperative Dairy, representing producers supplying milk in the Duluth-Superior market, proposed the continuance of this market, Order 69, as a separate regulation and expansion of the order to include the unregulated Minnesota counties of Cook, Lake, Itasca, Koochiching, and the remaining unregulated territory in St. Louis County.

Regulated handlers market a substantial portion of the total fluid milk sales in each of the counties in the northeast territory here adopted as part of the merged marketing area. Witnesses for two cooperative organizations indicated that regulated handlers have about 70 to 85 percent of total fluid milk sales in Aitkin County, 65 percent in Cass County, 55 percent in Crow Wing County, 65 to 73 percent in Koochiching County, and 90 to 93 percent in St. Louis County.

The Order 68 handlers include: Clover Leaf Creamery Co. of Minneapolis, distributing in Aitkin, Cass, Crow Wing, and Morrison Counties; Ewald Bros. of Minneapolis, distributing in Aitkin, Cass, Crow Wing, and Morrison Counties; Fairmont Foods, Inc., of Minneapolis, distributing in Morrison County; Land O'Lakes, Inc., at St. Paul, distributing in Aitkin, Cass, Crow Wing, Itasca, Morrison, and Todd Counties; Minnesota Milk Co. at St. Paul, distributig in Aitkin and Todd Counties; Purity Milk Co., St. Cloud, Minnesota, distributing in Aitkin, Morrison, and Todd Counties; and Hastings, Co-op Creamery Company, Hastings, Minnesota, distributing in St. Louis County.

Order 69 handlers include: Land O'Lakes, Inc., Bridgeman Division at Duluth, distributing in Itasca, Koochiching, and St. Louis Counties; Franklin Creamery Company at Duluth, distributing at Aitkin, Koochiching, and St. Louis Counties; Lester River Dairy, Inc., at Duluth, distributing in St. Louis County; and Russell Creamery, Superior, Wisconsin, distributing in St. Louis County.

Order 60 handlers distributing in the ten counties include: Cass Clay Creamery, Inc., at Fargo, North Dakota, distributing in Cass, Koochiching, and Todd Counties; and Fairmont Foods, Inc., at Moorhead, Minnesota, distributing in Cass, Koochiching, Morrison, and Todd Counties.

The Meadow Gold Dairies at Brainerd, Minnesota (Crow Wing County), also has marketed fluid milk products in eight of the 10 counties, Aitkin, Cass, Crow Wing, Itasca, Koochiching, Morrison, St. Louis, and Todd. The Brainerd plant, at the time of the hearing, was partially regulated under these three orders by virtue of route disposition into the marketing areas of Orders 60, 68, and 69. During the months of generally short production, the Meadow Gold plant has received as much as 48,000 pounds daily in supplemental supplies of pool

milk from Order 68 sources. It was the opinion of one cooperative furnishing such supplemental supplies that the Brainerd plant receives approximately an equal amount of milk directly from dairy farmers.

It appears from the record of the hearing that the Brainerd operation would be regulated by the inclusion of the 10 named counties proposed herein to be included in the marketing area. However, as a matter of public knowledge, the Grade A operation of this plant has been closed, and the associated fluid milk sales have been absorbed in the operations of other handlers. The Meadow Gold Dairies was not represented at the hearing and no post-hearing brief was filed to indicate the position of this handler with regard to the issues under consideration.

In St. Louis County, 85 percent of the total fluid milk sales are made by regulated handlers. There are four unregulated plants in this county; milk from these plants is distributed in Itasca and St. Louis Counties. Operators of the four plants oppose the regulation of Itasca and St. Louis Counties.

The populated areas in St. Louis County include the city of Duluth with a population of 105,000, Hibbing Village, 16,000, Virginia, 12,450, and Chisholm, 5,913. The unregulated fluid milk distributors in St. Louis County are clustered along U.S. Route 169 about 60 miles north of Duluth. The Island Farm Creamery Company is located at Hibbing; Aysta Dairy at Virginia; the Mesaba Dairy at Chisholm; and Wiinanen Dairy at Iron.

A representative of Island Farm Creamery Company, testifying also for the other unregulated handlers in St. Louis County, acknowledged competing with several regulated handlers in areas he serves in Itasca and St. Louis County. He claimed that the "Iron Range" unregulated milk plants process at least 50 percent of the total milk sold in Grand Rapids, which includes about half the total population of Itasca County (17,570). He also claimed that over half the milk sold in other small communities, including Cooley, Coleraine, Marble, and Bovey, in Itasca County, and Hibbing in St. Louis County, also is sold by the Iron Range milk distributors. The combined 1970 poulatión of these communities is about 18,000. Further the witness claimed that a jobber for Island Farms, together with the Wiinanen and Aysta operations, has about 50 percent of the total sales in Virginia, a city of 12,450 in St. Louis County.

The Island Farm Creamery and the other unregulated plants distributing fluid milk in the St. Louis-Itasca area receive milk from dairy farmers and, in the short production season, obtain supplemental milk supplies from Order 68 sources, including two cooperative associations that are proponents of regulation of St. Louis and Itasca Counties. Thus, the four unregulated handlers are relying on the regulated markets to carry reserves for their operations. These unregulated handlers do not pay dairy farmers for milk on a classified-use basis. The witness for Island Farm Creamery indicated his price to farmers is essentially geared to uniform prices of regulated markets that reflect a much larger proportion of milk in manufacturing use than in his operation.

In these circumstances, prices paid by handlers doing business in Itasca and St. Louis Counties are not uniform as between regulated and unregulated plants; producers are not being paid the full classified use value for milk supplied to the unregulated plants; and the proceeds from the higher valued fluid milk sales and the burden of carrying the reserve milk supply is not being shared equitably as between producers supplying regulated plants and those supplying unregulated plants. Full regulation of this territory would assure uniformity of prices to all handlers doing business in the area, as well as uniformity of returns to all producers supplying milk for sale in the area.

It is concluded, therefore, that Itasca and St. Louis Counties should be included in the marketing area of the merged order. It is further concluded that the Minnesota counties of Lake and Cook also should be included in the designated marketing area of the merged orders.

The Twin Ports-Arrowhead Cooperative Dairy proposed that the two counties (Lake and Cook), together with other specified territory in Minnesota and Wisconsin, be included in an expanded marketing area for the Duluth-Superior Order 69. Since the Duluth-Superior marketing area would be in the merged marketing area, it is necessary to consider whether Lake and Cook Counties should be included also.

These two counties, in the northeastern part of the state, are bounded on the north by the Canadian border, on the south by Lake Superior, and on the west by St. Louis County.

The representative for the Twin Ports-Arrowhead Cooperative Dairy testified that regulated handlers distribute all fluid milk products sold in Cook County and about 80 percent of the total fluid milk sales in Lake County. Unregulated handlers, this witness testified, have some fluid milk sales in Lake County.

There are no known milk plants located in Lake and Cook Counties. Both counties are small in terms of population. Cook County in 1970 had a population of 3,423 and Lake 13,351.

The unregulated handlers who have sales in Lake County were not identified, but could be one or more of the unregulated handlers with plants in St. Louis County. The regulation of these two counties likely will assure that such unregulated plants will have their entire sales distribution in the regulated marketing area. There was no opposition to the proposals to regulate Cook or Lake Counties.

SOUTHWESTERN MINNESOTA-EASTERN SOUTH DAKOTA

The 11 counties proposed for regulation in southwestern Minnesota are Chippewa, Jackson, Lac Qui Parle, Lyon, Murray, Nobles, Pope, Swift, Yellow Medicine, Pipestone, and Lincoln. There was no opposition expressed to regulation of milk handled in the unregulated southwestern Minnesota territory.

At the time of the hearing, milk distributed in these unregulated counties was from several regulated handlers and one plant not regulated by a Federal order, Oak Grove Dairy (Plant No. 2) in Norwood, Minnesota.

The Oak Grove Dairy operates two plants at Norwood, one plant being a fully regulated distributing plant under Order 68, and the other, referred to as Plant No. 2, operating at the time of the hearing as a nonpool distributing plant. (In a post-hearing brief filed by one of the merger proponents, it was noted that all sales of Oak Grove Plant No. 2 had become fully regulated after the hearing.) A witness for one of the merger proponents estimated that the Oak Grove Plant No. 2 receives Grade A milk daily from about 30 dairy farmers.

Packaged fluid milk products processed at this plant are distributed in all 11 counties in southwestern Minnesota. In addition, milk is distributed from this plant in several of the unregulated counties in northern Minnesota that are herein proposed for regulation.

Fluid milk products also are distributed in the 11 southwestern county area by handlers regulated under Orders 60, 61, 68, and 76. Order 68 handlers distributing in this unregulated territory include: Clover Leaf Creamery Company of Minneapolis; Ewald Brothers, Inc., of Minneapolis; Land O'Lakes, Inc., of St. Paul; Purity Milk Co., St. Cloud; Fairmont Foods, Inc., of Minneapolis; and Minnesota Milk Co. of St. Paul. Two Order 60 regulated handlers, Cass Clay Creamery, Inc., of Fargo, North Dakota, and Fairmont Foods, Inc., Moorhead, Minnesota, also distribute in this area.

Order 61 regulated handlers with distribution in these southwestern Minnesota counties include: Marigold Foods, Inc., Rochester, Minnesota; Sanitary Dairy, Sleepy Eye, Minnesota; and Golden Dairy, Austin, Minnesota. One Order 76 regulated handler, Land O'Lakes, Inc., Sioux Falls, South Dakota, distributes fluid milk products in 10 of the 11 proposed southwestern counties, Swift County being the exception.

In April 1974, regulated handlers under Orders 60 and 68 together distributed about 1.7 millión pounds of fluid milk products in these unregulated southwestern Minnesota counties. Similar data for Orders 61, 69, and 76 is restricted because of the limited number of handlers regulated under those orders selling into this unregulated territory.

Estimates of the percentage of fluid milk sales in each of the counties in the southern sector were made by two producer groups. It is apparent from the data placed in the record that presently regulated handlers have 50 percent or more of the total sales in each of these counties.

A milk distributor at Le Mars, Iowa, regulated under the Nebraska-Western Iowa Order 65, testified to having sales in the counties of Jackson, Pipestone, Nobles, Murray, and Lyon. The La Mars

handler favored the regulation of these specified counties under an order, without suggesting any particular order or merged group.

The unregulated county of Lincoln, Minnesota, is contiguous to Brookings County, South Dakota. South of Lincoln County, the Minnesota counties of Pipestone and Nobles border on the present Order 76 marketing area. Seventy percent of the fluid milk sales in Nobles County are distributed by a Sioux Falls pool distributing plant. In the counties of Pipestone and Lincoln, about 50 percent of the total sales also are from the Sioux Falls pool plant. Some sales in the three Minnesota counties originate from milk distributors regulated under Orders 65 and 68.

The regulation of milk marketed in the South Dakota counties of Brookings and Deuel was proposed by the National Farmers Organization. A representative of Lakeside Dairy Company, Sioux Falls, South Dakota, testified in support of regulation of Brookings and Deuel Counties, but was indifferent as to the order under which the two counties should be regulated.

Brookings and Deuel Counties are bounded by the present Order 76 marketing area on the south and west, and on the north by the Order 60 marketing area. The eastern boundaries of the two counties are contiguous with the 11-county southwestern Minnesota territory proposed for inclusion in a merged order. Brookings and Deuel Counties had a 1970 population of 22,000 and 5,700 respectively.

Milk not regulated by any Federal order is marketed by one dealer in Brookings and Deuel Counties. This is the Bibby-Kallenmeyer Dairy (commonly referred to as the B.K. Dairy) at Brookings that is partially regulated under Order 76 by virtue of route sales in the Order 76 marketing area. About 60 percent of the fluid milk sales in Deuel and Brookings Counties are made by B.K. Dairy. Terrace Park Dairy, Sioux Falls, South Dakota, regulated under Order 76, and Marigold Food, Inc., Rochester, Minnesota, regulated under Order 61, each have 20 percent.

The B.K. Dairy did not provide testimony at the hearing and filed no post hearing brief that would indicate its position as to the regulation of the two counties.

Besides milk purchased from dairy farmers, the B.K. Dairy has obtained supplemental supplies of milk regulated under Order 76 through Land O'Lakes, a regulated handler. Such supplemental purchases have amounted to 30,000 pounds weekly in the short production season. The B.K. Dairy, thus, is relying on the regulated market to carry its reserve supplies, and the producers under Order 76 are receiving the lowest class price for such volume when it is not needed by the B.K. Dairy. At the same time, the B. K. Dairy, having a very high proportion of its dairy farmer receipts used in fluid sales, is able to pay a price to such dairy farmers competitive with the uniform price of the order without paying a price reflective of the classified use value of such milk. In these circumstances, the B. K. Dairy has a cost advantage relative to regulated handlers and the dairy farmers who supply the plant are not receiving the full value of their milk according to the class of use.

The sales area of the B. K. Dairy overlaps with handlers regulated by the Eastern South Dakota order. Procurement areas of such regulated handlers also extend into Deuel and Brookings Counties and adjoining counties. There was no opposition to the regulation of the two South Dakota counties.

It is concluded in light of the considerations set forth herein, that the Minnesota counties of Nobles, Pipestone, and Lincoln, and the South Dakota counties of Brookings and Deuel, are a logical extension of the Order 76 marketing area and appropriately should be incorporated thereunder.

Regulated handlers are estimated to market from 80 to 85 percent of the total fluid milk products sold in Houston County, in the southeastern corner of the state. Two regulated handlers, the Land O'Lakes plant, St. Paul, Minnesota (regulated under Order 68), and the Marigold Foods, Inc., plant at Rochester, Minnesota (regulated under Order 61), are marketing milk in this county. Doing business in this same county is the Schiltz Farms, Inc., at Caledonia, Minnesota, a producer-handler who has sales in the Order 61 and Order 30 marketing areas. Also, the Oak Grove Plant No. 2 of Norwood, Minnesota, has distribution in Houston County.

It is concluded, for the identical reasons advanced by proponents for annexing the 11 southwestern Minnesota counties, that Houston County should be included in the marketing area of the merged order.

4. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants, and milk to which the applicable provisions of the order relate.

The following provisions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "pool plant," and "nonpool plant." Definitions relating to milk and milk products include "producer milk," "fluid milk product," "fluid cream product," "filled milk," and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Plant. A "plant" definition should be provided for the purpose of designating the type of handling facilities to which the order provisions would apply. As defined under the merged order, a plant would be the land, buildings, facilities, and equipment that constitute a single operating unit at which milk or milk products are received, processed, or packaged. Separate facilities used solely as intermediary distribution points in the disposition of packaged fluid milk products would not be plants. Similarly, separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another would not be a plant as defined herein.

None of the four orders provide for the pricing or pooling of milk at a reload point. The Minneapolis-St. Paul and Minnesota-North Dakota orders specifically exclude reload points for such purpose in the "plant" definition, while the Southeastern Minnesota-Northern Iowa order does so in the "pool plant" definition. The Duluth-Superior order does not specifically exclude a reload point as a "plant" or "pool plant," but neither does it provide for the pooling of such facilities.

It is not intended under this order that facilities that are used only for the reloading of milk from one tank truck to another be the pricing point for milk so handled. These facilities must be distinguishable, however, from facilities at which milk handled is to be priced.

It is not usual for a reload point to have stationary storage tanks for the holding of milk for one or two days. Rather, it is customary for milk that has been picked up at the farm by several tank trucks to be brought to the reload point and transferred directly to a large over-the-road tank truck for movement to processing plants. Accordingly, the absence of any stationary storage tanks is a reasonable means of identifying a reload facility.

Situations could arise where the individual producer identity for milk handled at reload points is lost. Some of the milk on a farm pick-up tanker could be reloaded onto an over-the-road tank truck and delivered to a pool plant while the remaining milk on the farm truck is held overnight in a tank truck and perhaps transported to another plant (either pool or nonpool) the next day. In this situation, it is not possible to know which producer's milk was delivered to which plant on which day. It is necessary, nonetheless, for the order to provide for the pricing of the milk of those dairy farmers at a plant location. Under these circumstances, the milk of individual producers involved appropriately should be prorated between the plants at which their commingled milk was received.

As described later in this decision, it is provided that milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a handler (including a cooperative association in its capacity as a bulk tank handler) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where the milk is physically received in the following month. These guidelines are discussed

later in more detail under the heading "Producer milk."

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants, supply plants, and reserve supply plants that are contained in the attached order have been structured to accomplish this.

The "pool plant" definition adopted herein sets forth all of the various performance standards that plants must meet to qualify for pooling. For this reason, definitions of a "distributing plant" and a "supply plant," as contained in the individual orders, except the Minneapolis-St. Paul order, are not needed. Reference is made in this decision to such types of plants, nevertheless, since the adopted pooling standards relate to plants performing different types of functions in the market.

A requirement now common to all types of pool plants in the four individual orders is that the plants be approved by a duly constituted regulatory agency for the handling of Grade A milk. It was pointed out at the hearing that this requirement allows certain distributing plants without Grade A certification to escape regulation under the order since the State of Minnesota allows the bottling and distribution of non-Grade A milk. Under these circumstances, regulation under the existing orders can easily be evaded by a plant operator simply not requesting that his plant be approved for the distribution of Grade A milk. In this way, even though a plant handles only Grade A milk, the plant operator can gain a considerable price advantage over competing regulated handlers who are required to pay the Class I price for milk used for fluid use.

To assure equal treatment for all handlers competing in the fluid milk market and full equity among producers, the order should regulate distributing plants without regard to whether they have Grade A certification. It is principally the job of the State and local regulatory agencies to provide minimum quality standards for milk sold within their jurisdiction, while the Federal order assures a sufficient quantity of such milk through orderly marketing conditions and minimum prices to producers.

The order, however, should continue to assure minimum prices only to producers of Grade A milk, since only Grade A milk is allowed to be distributed in most of the marketing area. The cities of Moorhead, Minneapolis, St. Paul, Rochester, and St. Cloud, Minnesota; Fargo and Grand Forks, North Dakota; Aberdeen, South Dakota; Stacyville, Iowa; and Eau Claire and Superior, Wisconsin, all have Grade A ordinances that require fluid milk plants to be approved for distribution of Grade A milk. Thus, only Grade A milk should be pooled and priced under the order. In the event any ungraded milk is assigned to Class I, such milk should be considered "other source milk" to be accounted for by the handler to the pool at the difference between the Class I price and the uniform price. The order would have no jurisdiction over prices paid to producers of ungraded milk, however.

In the situation existing in this merged marketing area, it is unlikely that a handler could secure a supply of milk for bottling use at less than the uniform price under the order. Under such circumstances, a pool payment at the difference between the Class I price and the uniform price will reasonably neutralize any competitive price advantage a handler might otherwise gain by the use of other source milk.

The agency responsible for approving a plant for the handling of Grade A milk may not always be a designated health authority. In some states, for example, this function is the responsibility of the State Department of Agriculture. Therefore, the term "regulatory agency," rather than "health authority," as used in the present orders, is a more appropriate description of the agency controlling the approval of milk for disposition in the marketing area.

The following discussion sets forth the pooling standards that should apply to the several types of plants. To facilitate discussion, it is noted that the pooling standards for a distributing plant, a supply plant, or a reserve supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its receipts that is disposed of from the plant. It is intended that such receipts shall include any producer milk that is diverted from the plant by the plant operator to other plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires pool status by virtue of its association with such plant. Therefore, to protect the integrity of the regulation, diverted milk must be included as a receipt for purposes of establishing the diverting plant's qualification for pooling. Otherwise, the performance standards prescribed would have no real meaning.

Conversely, milk received at a pool plant by diversion from a pool distributing plant would not be included in the divertee plant's receipts for the purpose of measuring such plant's association with the market. Thus, when referring herein to a plant's receipts used in computing pooling percentages, it is intended that such receipts include producer milk diverted from the plant by the plant operator, but exclude milk received at such plant as diverted milk.

Under the adopted pooling standards, any distributing plant would be a pool plant if, during the month, its total route disposition as a percent of its total receipts is at least equal to the marketwide Class I utilization during the same month of the preceding year, and if 15 percent of its receipts is disposed of as route disposition in the marketing area.

All of the major proponents proposed a 15 percent in-area route disposition standard. Two of the three proponents proposed a variable schedule for total route disposition, with a 30 percent requirement during the months of January through June, and a 40 to 50 percent requirement during the remaining months of the year.

It is desirable to have seasonal variation in pooling standards since production varies seasonally while fluid demand is relatively stable throughout the year. The provision recommended herein ties the total Class I disposition standard to the Class I utilization of the market and accordingly, does provide a variable pooling standard reflecting seasonality of production.

Distributing plants generally receive more milk during the spring flush production months than during the short production months of fall and early winter. While their Class I disposition remains fairly stable throughout the year, the percent of their milk supply used in Class I does not.

The minimum overall Class I distribution requirement should be related to the marketwide Class I utilization, since a distributing plant operator with Class I business both within and outside the marketing area, otherwise could adjust his own sales and receipts to insure that his Class I utilization fell below the minimum requirement for pooling, even though higher than the marketwide utilization. Although the utilization value per hundredweight of milk in such a plant would be higher than the marketwide uniform price, the plant operator would not be required to pool his higher-than-average use value with other market participants or to make pool payments on his out-of-market sales; thus, there would not be full marketwide pooling of proceeds among producers. Moreover, the operator of such a partially regulated plant could use his higher-than-average use value as an advantage in solicitation of producers.

A distributing plant which does not meet the minimum pooling standards would be subject to regulation only on its in-area sales (not offset by Class I milk purchased from regulated plants). The order requires the operator of a partially regulated distributing plant to make a pool payment on such in-area sales from the plant equal to the difference between the order's Class I price and blend price. As an alternative, the plant operator could pay his dairy farmers the classified use value for all receipts. These payment arrangements have been applicable under the individual orders for many years.

Since changes in Class I utilization throughout the year normally follow a predictable pattern, it is reasonable to use the marketwide Class I utilization percentage for the same month of the preceding year as the standard in determining which distributing plants are eligible to pool during the month. The monthly utilization percentage for the market in the previous year would not differ appreciably from the corresponding current month.

The weighted average Class I utilization for the four markets during the months of 1974 ranged from 25 percent in June to 42 percent in October. Although these standards are more stringent than those now contained in the Minnesota-North Dakota order (20 percent March–June and 25 percent July–February), it is not expected that any distributing plants now regulated under that order (or any of the other three orders) will lose their status as fully regulated plants under the merged order.

Mid-America Dairymen, Inc., proposed retention of a provision now in the Minnesota-North Dakota order under which the operation of all distributing plants operated by the same handler may be combined and treated as a single plant for the purpose of determining such plants' pooling status, if so requested by the handler. This provision is not necessary for the merged order since any distributing plant in the marketing area that is unable to meet the pooling standards set forth above likely would qualify for pooling under the additional standards discussed below.

Proponents proposed retaining the basic features of the supply plant pooling standards now contained in the Minneapolis-St. Paul order. They proposed variable supply plant shipping standards, with greater shipment requirements during the short production months than during the flush production months of the year. Also, two of the proponent cooperatives proposed retention of the "unit pooling" of supply plants now contained in the Minneapolis-St. Paul order. Unit pooling allows two or more supply plants to be combined as a "unit" for the purpose of meeting pooling standards. Another feature of these proposals that is now part of the Minneapolis-St. Paul order provisions would allow direct shipments of milk from the farm to a distributing plant to count as a qualifying shipment for a supply plant under certain circumstances.

This type of supply plant provision has evolved with the change from can to bulk tank handling of milk. With the advent of bulk tank handling, the role of supply plants as an assembly point for milk received directly from the farm has largely given way to the role of "balancing plant", processing the market's reserve supplies when not needed for fluid use. This is because, with bulk tank handling, it is usually less costly to move milk directly from the farm to distributing plants than it is to first assemble the milk at a supply plant and then transfer it to a distributing plant. Despite this change, some supply plants still perform valuable milk handling functions in the market, such as standardizing milk or storing milk for a temporary period to accommodate the bottling needs of a distributing plant.

In recognition of widespread bulk tank handling, pooling standards for plants other than distributing plants in some orders have been modified to provide that such plants may be pooled on the basis of milk shipped directly from farms to pool distributing plants or on the basis of shipments from other plants in a unit of plants. In lieu of these specific types of provisions, two different provisions are provided to accomplish the same end: one for a "supply plant" that regularly ships fluid milk products to pool distributing plants and one for a reserve supply plant."

The supply plant pooling standard adopted herein for the merged order is based on shipments from the plant to pool distributing plants. The shipping standard for each month is the market-wide Class I utilization during the same month of the previous year. Although this shipping standard is more stringent than was proposed by proponents, it is expected that most plants in the marketing area (which is essentially coextensive with the procurement area for handlers serving the market) not qualifying as distributing plants will qualify as reserve supply plants rather than as supply plants.

The merged order area has a great deal more Grade A milk than can be used by distributing plants in the area. Under the current provisions of the four individual orders, certain supply plants in the area have not been able to find distributing plant outlets through which to acquire pool status. Frequently, such plants have been able to acquire pool status in other markets, such as the Southern Illinois and Kansas City markets. However, proponent witnesses stated that blend prices under these markets, adjusted to their plant location, have often times been lower than the blend prices available if the plant were pooled locally.

Pressures to pool likely will increase in the future as Grade B milk continues to convert to Grade A and seeks a share of the fluid market. Thus, it is apparent that pooling standards that will accommodate the pooling of most of the Grade A milk produced within the marketing area are needed for the merged order in the interest of continuing orderly marketing. However, such pooling standards must be so structured that supplies are made available to the fluid market as needed.

It is proposed, therefore, that any plant located in the marketing area and approved by a duly constituted regulatory agency for the handling of Grade A milk be allowed to pool if certain conditions are met.

To assure that the milk included in the pool is, in fact, available for the fluid market, it must be established that the plant can serve the fluid market if milk is needed. If the quality of milk needed through a reserve supply plant is not sufficient for bottling purposes, or if the quantity of Grade A milk there handled is too small for economic transport to a distributing plant, the milk associated with such plant could not reasonably be considered a part of the reserve supply for the fluid market. As evidence of a plant operator's ability and willingness to supply milk for fluid use, at least one tank truck load of milk (at least 45,000 pounds) must have been shipped from the plant to a pool distributing plant or to a comparable plant under another Federal order within the past twelve months as a condition for pooling initially. Once qualified as a pool plant, the plant operator need not ship milk to a pool distributing plant unless called upon, as explained below. However, if the plant should lose its pool status as a reserve supply plant, it would again have to meet the one tank truck load shipping requirement within the last twelve months before being requalified.

The operator of a reserve supply plant must agree to supply milk from the plant to pool plants or other order plants whenever the market administrator announces that such shipments are needed. To this end, it is provided that the market administrator may announce a shipping requirement, which may not exceed the percentage of shipments required of a pool supply plant during the month, any time he finds that supply-demand conditions warrant such shipments. He may reach this conclusion after investigating—either on his own initiative or at the request of interested persons—the supply-demand conditions in the market.

To promote the most efficient marketing of milk, the market administrator may restrict his shipping requirement to the smallest part of the marketing area necessary to secure the needed milk supplies. This procedure will circumvent the possibility of requiring needless shipments from those plants least favorably located with respect to distributing plants, unless and until the more favorably located reserve plants have shipped at least the market's average Class I utilization. This procedure will insure maximum transportation savings.

A plant which does not comply with a shipping requirement prescribed by the market administrator would lose its pool status for the month in which it fails to comply. Moreover, such plant may not again qualify as a pool plant under this provision for a period of one year from the date on which pool status was lost.

A plant that was not a pool plant under the Upper Midwest order during each of the months of September through December should not be allowed to pool as a reserve supply plant during the following months of January through June. This requirement, which will not become effective until January 1, 1977, is necessary to deter the use of the Upper Midwest market as a "dumping ground" during the flush production months for milk associated with other markets during the months of short supply.

It is not uncommon, during short production months, for significant amounts of milk to be moved from the upper midwest area to various markets to the south. In some instances, this could entail the pooling on another market of a plant located in the Upper Midwest marketing area. After the short season is over, rather than keeping the plant pooled on the receiving market, the plant operator, without appropriate safeguards, could request and acquire pooling status for such plant under the Upper Midwest order. In such event, the producers on the Upper Midwest market

would bear the burden of carrying this milk during the flush season, even though they had not shared in the higher proceeds available to this plant during the fall.

Under usual circumstances, shipments to outside markets by any particular plant would not be expected to be sufficient to meet the pooling requirements of another market. However, if a reserve supply plant does serve a particular market during the short season to a degree requiring pooling there, it should remain associated with that market during the remaining months of the year.

Since the merged order will likely become effective shortly after the most current September-December period has ended, this provision should not become effective until January 1, 1977. This will allow plants that could not have pooled under any of the separate orders in their present form to become pool plants under the merged order when it is effectuated.

The operator of a plant seeking to pool as a reserve supply plant must file a request for pooling with the market administrator at least 15 days prior to the date on which pool status is desired effective. This 15 day notice will allow the market administrator to inspect the plant and facilities and determine the plant's ability to meet the requirements discussed above. Once qualified as a pool reserve supply plant, such status will continue to be effective unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions for pooling as a reserve supply plant, or the plant qualifies as a pool plant under another order.

The pool plant provisions specify that a reserve supply plant may not acquire pool status under this order if such plant is a pool plant under some other order. Under normal circumstances, a plant meeting the pooling standards of two orders is pooled in the market with which it has the more substantial association. Any plant pooled under another order, therefore, should be exempted from regulation under this order.

Land O'Lakes, Inc., proposed the pooling of a plant that failed to meet the pooling standards of a distributing plant or supply plant because of a strike, fire, riot, insurrection, breakdown of trucking equipment, hazardous road conditions, natural calamity, or other misfortunes beyond the control of the plant operator. Such proposed provision would not be limited to one month but would apply for an indefinite period, according to a LOL witness.

This proposal should not be adopted. However, a slightly different Land O'Lakes proposal, which would pool a distributing plant that met the pooling standards during the immediately preceding three months, should be adopted in modified form. As adopted herein, any distributing plant or supply plant that failed to meet the performance standards in the current month, but that had met such standards during each of the immediately preceding three months, would be pooled.

Producers should have protection against unexpected loss of pool participation of their milk because a distributing plant or supply plant, over which they have no control, failed to qualify as a pool plant. However, the "natural calamity" provision proposed by Land O'Lakes provides too much of an "open door" and could be subject to abuse. As proposed, a plant could conceivably qualify for pooling indefinitely while out of operation.

Allowing a plant that failed to meet the pooling standards for the month to be a pool plant if it met the requirements in each of the three preceding months is a reasonable and equitable basis for protecting producers' interests. It will afford handlers the opportunity to make corrective adjustments in their operations in the event of unanticipated circumstances or a miscalculation; and, in the case of a "natural calamity", it will afford producers reasonable opportunity to find an alternative pool outlet for their milk without losing pooling privileges in the interim.

One handler representative proposed a provision that would pool all Grade A plants in the marketing area with no performance standards to meet. However, in paying producers under this proposal, the uniform price would be adjusted upward in direct relation to a plant's Class I utilization: the higher the plant's Class I utilization, the greater would be the adjustment in price. This was intended to assure that milk would be made available for Class I use. Since this arrangement would clearly be in violation of the Agricultural Marketing Agreement Act, which requires uniform prices to producers "irrespective of the uses made of such milk by the individual handler to whom it is delivered", the proposal must be denied.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants other than pool plants. The four constituent orders now have identical "nonpool plant" definitions, with the exception of Southeastern Minnesota-Northern Iowa, which additionally defines an "exempt governmental plant" as a nonpool plant. The Minneapolis-St. Paul and Minnesota-North Dakota orders also exempt from regulation a plant owned and operated by a government agency, the former in the "handler" definition and the latter in the "pool plant" definition. Therefore, it is appropriate to include in the "nonpool plant" definition this exclusion from regulation of a plant owned and operated by a governmental institution which disposes of Class I milk solely for use on the premises of the institution or to its own facilities.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order.

Accordingly, the order should designate handler status for the following persons:

(1) The operator of a pool plant;

(2) A cooperative association with respect to milk that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk picked up at the farm for delivery to a pool plant under specified circumstances;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the market; and

(7) The operator of an unregulated supply plant.

Such persons are now defined as handlers under the four individual orders with the exception of the operator of an unregulated supply plant, who is now defined as a handler only under the Minneapolis-St. Paul order. The latter order also contains an unusual condition for qualification of a cooperative association as a handler on bulk tank milk. Under that order, a cooperative association must be the operator of a pool plant in order to acquire handler status on bulk tank milk delivered for its account from the farms of producers to the pool plants of other handlers. This provision should not be adopted for the merged order. Proponents generally agreed that a cooperative association's function as a bulk tank handler should not be contingent upon its operation of a pool plant.

A cooperative association's status as a handler for farm bulk tank milk should be modified from that now set forth in the individual orders. In the case of bulk tank milk, a cooperative should be a handler with respect to any such milk which it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, if there is a mutual arrangement between the cooperative and the plant operator, noticed to the market administrator, whereby the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm bulk tank samples, the cooperative need not act in a handler capacity with respect to such milk.

When the milk of any producer is commingled in a tank truck with that of other producers, the identity of the individual producer's milk is lost. The amount of the producer's milk in the truck and the butterfat content thereof can be determined only from measurement of the milk at the farm and from milk samples taken from the farm tank. After the milk has been pumped from the individual producers farm tank into the tank truck of the hauler and commingled with the milk of other producers, there is no opportunity to measure, sample or reject the milk of an individual producer.

Much of the milk received at pool plants in the proposed marketing area is picked up at the farm in trucks owned or operated by, or under the control of, cooperative associations. In this case, it is only the association that has the opportunity to measure and sample the

milk of individual producers that is received at the pool plant. In the absence of any agreement by the plant operator to be the handler for the milk, the association necessarily must be the responsible handler for the milk as it leaves the farm.

When a cooperative is the handler for farm bulk tank milk, certain accounting and payment procedures should apply under the merged order with respect to such milk. As provided in the attached order, the milk would be considered as a receipt of producer milk by the cooperative at the location of the pool plant to which the milk is delivered. The purchase of such milk by the pool plant operator would be treated as an interhandler transfer but would be classified pro rata with producer milk that the pool plant operator may receive. The pool plant operator would be obligated to the producer settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value. The cooperative in turn would be reimbursed by the handler at the blended price. Milk which the cooperative has picked up from the farm bulk tank and which has not been delivered to a plant during the month will be accounted for by the cooperative as ending inventory and the cooperative will be paid the blended price applicable at the location of the plant of physical receipt in the following month. In the following month, the cooperative's pool obligation will be adjusted to reflect the value of such inventory at the Class III price for the previous month. This is in contrast to the procedure under the Minneapolis-St. Paul, Minnesota-North Dakota, and Duluth-Superior orders whereby the cooperative association accounts to the pool at class prices for the milk delivered to pool plants. Under the Southeastern Minnesota-Northern Iowa order, the milk delivered by a cooperative is now treated as a receipt of producer milk by the plant operator, who then is obligated to the pool for such milk.

The adopted accounting and payment procedure will facilitate administration of the order with respect to matters of financial responsibility and audit adjustments. It is the pool plant operator who processes the milk and distributes it to consumers. It is reasonable, then, that the responsibility for accounting for the utilization of such milk and for its payment be placed directly on the plant operator. Were settlement with the pool to be made by the cooperative association, i.e., should the plant operator settle with the cooperative at class prices and the cooperative pay to the producer-settlement fund, an unnecessary third party is involved in the transaction. Also, the handling of audit adjustments that might result from the verification of a plant's utilization of milk. An error in the reported classification of milk at the pool plant, for example, would not require a related adjustment in the cooperative's classification of milk and thus its obligation to the pool for such milk.

A pool plant operator receiving farm-bulk tank milk from a cooperative also should be responsible for paying to the market administrator the administrative assessment on such milk. The audit and verification activities of the market administrator relate essentially to the operations of the pool plant where the milk is processed. As in the case of producer milk which he receives from the farm, the plant operator thus should pay his pro rata share of the administrative costs on milk received from the cooperative in its capacity as a bulk tank handler.

When the cooperative assumes its role as the responsible handler on farm bulk tank milk, the pool plant operator may buy such milk on the basis of weights and butterfat tests determined at the plant rather than on the basis of those determined at the farm. Usually, the quantity of milk picked up at the farm slightly exceeds the quantity ascertained as actually received at the plant. In such cases, the difference should be considered as a receipt of producer milk by the cooperative association at the location of the pool plant where the milk in the tank truck was delivered. The cooperative should be obligated to settle with the producer-settlement fund and to pay the administrative assessment on the milk involved.

The pool plant operator should be permitted under the merged order to be the responsible handler on bulk tank milk moved by the cooperative from the farm to the plant if both the cooperative and the pool plant operator notify the market administrator that they have agreed to such a handler arrangement and that the plant operator agrees to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement, the pool plant operator would be responsible for the milk in the same manner as for producer milk that he receives at his plant directly from the farm. This would include being responsible for submitting to the market administrator monthly reports showing for each producer the farm weights and tests of milk received at his plant.

A cooperative association also should be a handler with respect to the milk of a producer which is diverted for the account of the association from a pool plant of another handler to a nonpool plant that is not a producer-handler plant. All the orders proposed to be merged provide that a cooperative may act as a handler for diverted milk. Continuation of this handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of its members for delivery to a pool plant or for diversion to nonpool plants. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who, although he has not become a member of the cooperative, has contracted with the cooperative to act as the marketing agent for his milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the merged order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives may "deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than as are "handled by it for members."

A question may arise concerning payments to a nonmember producer if the cooperative is marketing such producer's milk. A cooperative may reblend proceeds due such nonmember producer with those paid to its member producers if the nonmember producer has signed a contract with the cooperative whereby he authorizes the cooperative to market his milk, collect payment therefor, and reimburse him on the same basis as though he were a member of the cooperative association. The contract between the cooperative and the nonmember producer must provide specifically for a payment reflecting: (1) The same blending of proceeds as is otherwise done for members; (2) the same treatment for withholding for capital (revolving fund); (3) the same right of liquidation of certificates issued for a revolving fund or other capital withholding; and (4) the same privilege of sharing and ultimate distribution of proceeds if and when such special distribution is made, such as dividends or returns of unused deductions. In the absence of such a written contract containing the terms set forth above, the cooperative, if authorized, nevertheless, to collect payment for his milk, would be required to pay a nonmember producer not less than the uniform price announced by the market administrator for the month.

Producer-handler. The merged order should continue the exemption now contained in each of the four individual orders of a "producer-handler" from the pooling and pricing provisions of the order.

Experience under the separate orders has demonstrated that effective regulation can be insured without the full regulation of individuals who process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk asso-

ciated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce.

As adopted herein, a "producer-handler" would be any person who operates a dairy farm and a processing plant, who receives no fluid milk products from sources other than his own farm production, pool plants of other handlers, and other order plants. Any receipts of nonfluid milk products could only be used to fortify fluid milk products received from his own farm, other pool plants, or other order plants. To qualify as a producer-handler, such person would have to provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

This producer-handler definition is essentially the same as the one now in the Minneapolis-St. Paul order and which was proposed by the National Farmers' Organization and Mid-America Dairymen, Inc. One slight difference is that the producer-handler would be allowed to receive fluid milk products from another order plant as well as from pool plants of other handlers. This point does not in any way threaten the integrity of the order, but it does allow for special circumstances where a producer-handler located on the edge of the marketing area might find it more convenient to purchase fluid milk products from a nearby other order plant than from a pool plant that is located farther away.

The proposed definition continues to forbid the receipt of nonfluid milk products for use in reconstituting fluid milk products, but such receipts are allowed for use in fortifying fluid milk products. Also, it retains the 50,000 pound limit on receipts of fluid milk products during the month from fully regulated plants.

Land O' Lakes proposed a 7,000 pound average per day limit on route disposition in the marketing area during the month. A LOL spokesman testified that the purpose of this limit would be to preclude the institution of large production, processing, and distribution complexes that could become a significant competitive force in the marketing area. This witness indicated that the producer-handlers now operating in the proposed marketing area are below this size and have not been a significant problem in the market.

No evidence was presented to show that a producer-handler distributing more than 7,000 pounds per day would be a disruptive factor in the merged market. No size limitations on producer-handlers are provided now under the individual orders. Therefore, a restrictive provision of this nature appears unneeded in the merged order at this time.

Under the merged order, producer-handler status would be contingent upon such person substantiating to the satisfaction of the market administrator that the operation of the dairy farm and processing plant in question are at his sole risk. As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated on the premise of self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or his plant. All resources necessary for his own farm production of milk and for the operation of the processing plant must be his personal risk. Similarly, all risk associated with the actual distribution on routes of the milk processed by the producer-handler must be his alone.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition provided herein follows closely the one proposed and supported by each of the merger proponents. It is virtually identical to the producer definitions in each of the four separate orders.

Producer status under the merged order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a handler on farm bulk tank milk for a delivery to a pool plant. Producer status also should be accorded such a dairy farmer who has an established association with the market and whose milk is diverted to nonpool plants for surplus disposal. To determine a producer's association with the market and to insure the marketability of his milk in Grade A channels, it is reasonable to require that a dairy farmer's milk be received at a pool plant at least once before becoming eligible for diversion to a nonpool plant.

A producer-handler, who would have exempt status under the order, is expected from the producer definition. In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should continue the provisions of the present orders that exclude (1) a person with respect to milk which is received at a pool plant regulated under this order as diverted milk from a pool plant under another order if the dairy farmer whose milk is involved is a producer under the other order with respect to such milk and it is allocated to Class II or Class III use under this order, and (2) a person with respect to milk which is diverted to an other order plant from a pool plant regulated under this order if assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define that milk to be priced and pooled under the merged order. The definition adopted herein contains the basic features now in the individual orders and in the proposals by the merger proponents.

As provided herein producer milk would include milk received directly from a producer at a pool plant by the plant operator, milk picked up at a producer's farm during the month in a tank truck under the control of a handler that is received at a plant in the following month, and milk of a producer that is received by a cooperative association as a bulk tank handler for delivery to a pool plant. Producer milk also would include milk of producers that is diverted under specified conditions.

Producer milk should include milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a pool handler but which is not received at a plant until the following month. Such milk should be considered as having been received by the handler in the month it is picked up at the producer's farm and should be priced at the location of the plant where the milk is physically received in the following month.

Under the present accounting procedure in the respective orders, milk which is picked up at the farm in the current month, but which is not physically received at a plant until the following month, is treated as a receipt of producer milk in such following month. This procedure has presented substantial accounting problems, particularly when milk passes through a reload facility. In such instance, a portion of the pick-up tanker's load may be transferred to an over-the-road tanker and delivered during the month, while the remainder of the load may be held at the reload facility. While administrative guidelines have been adopted to insure uniform accounting procedures for such milk throughout the Federal order system, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement which results when milk picked up in the current month is not physically received at a plant during the month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of a month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at the farm. The changes provided herein will permit the pooling of producer milk in the month it is picked up at the farm if the milk is received at a plant in the current or the following month. Milk not physically received at a plant in the current month will be included in the responsible handler's end-of-the-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk reasonably will be received at a plant on the 1st day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report, which he is required to file by the 10th day of the following month. If, however, none of the milk loaded into a pick-up

tanker is received at a plant, such milk will not be included in the responsible handler's report and he will have no pool obligation on it. This conforms with the present provisions, which tie the producer milk provisions to its receipt at a plant.

If the operator of a pool plant is the responsible handler, he will account for the producer milk which has not arrived at his plant by the end of the month as part of his end-of-the-month inventory and will be charged the Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products he had in inventory.

If a cooperative association bulk tank handler is the responsible handler, such cooperative will account for the milk in transit as inventory at the Class III price and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation in the preceding month on such milk. In such following month, this milk is included in the obligations of the pool plant handler who physically received it and he will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but, since the milk was pooled in the preceding month, it would not be included in the pool computation of the current month.

Diversions of producer milk from a pool plant to a nonpool plant that is not a producer-handler plant, for the account of the handler operating the pool plant, are recognized within specified limitations. Similarly, diversions may be made for the account of a cooperative from the pool plant of another handler. Also, producer milk may be diverted from a pool distributing plant to any other pool plant for the account of the distributing plant operator.

Diversion provisions are desirable to facilitate the orderly and efficient disposition of the market's reserve supplies. When producer milk is not needed in the plant of normal receipt for Class I use, its movement to other pool plants or to nonpool plants for manufacturing, without loss of producer milk status, should be accommodated.

Since the merged market is expected to have a Class I utilization ranging from 25 percent in the spring to 40 percent in the fall, a substantial portion of the market's supply will likely be diverted to manufacturing outlets. To accommodate the pooling of all the milk that is available to supply the fluid market, the diversion limitation in any month should be equal to the combined Class II and III utilization in the same month of the prior year. (It will be necessary at the outset of this order for the market administrator to compute the weighted average Class II–III utilization of the four markets combined herein for the prior 12 months for use during the first year of the merged order.) This system will provide built-in flexibility, automatically providing for seasonal changes in supply and demand. It is not expected—with such a large market—that the utilization will change appreciably from one year to the next; thus, use of data for the same month of the preceding year should be entirely appropriate as a measure of the market's Class I needs.

The diversion limitations supported by two of the proponent cooperative associations in their briefs would allow diversions equal to 50 percent of producer receipts throughout the year. The other major proponent supported a limit of 50 percent during the months of August through December and 65 percent in all other months.

The individual orders now vary with regard to diversion limitations. The Minnesota-North Dakota order provides for unlimited diversions during the months of March through June, while limiting diversions in other months to 50 percent. During the flush production months of the year, several handlers have diverted to the full extent permitted under this order, resulting in diversions approaching 70 percent for the market as a whole.

The limits adopted herein, while stopping short of 100 percent, should not cause any disruptions in the operations of these handlers since they apply only to diversions to nonpool plants. Surplus milk in excess of these limits should reasonably find an outlet in some other pool plant.

The merged order should permit the operator of a distributing plant to divert milk to any other pool plant for his (the diverting handler's) account. No separate limits need apply to such diversions, since the performance standard applicable to a pool distributing plant effectively limits such diversions to an appropriate level.

The President of the Dairies Federation of Minnesota proposed allowing a distributing plant operator to divert the milk of his regular producers to other pool plants for his account. He testified that handlers wishing to retain their regular producers on their payroll for the entire month must now bring any excess milk into their plant (so that it will be a "producer receipt" there), then pump it right back into the truck, and deliver it to the other pool plant. Such milk would be treated as a transfer from one plant to another, with the transferor handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic. Moreover, as the witness pointed out, every time milk is pumped, its quality deteriorates.

The merged order should, in so far as possible, promote the most efficient handling of milk. To this end, the operator of a pool distributing plant should be permitted to divert his reserve milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. This will permit a distributing plant operator to avoid unnecessary and costly movements of milk merely for the purpose of retaining his status as the accountable handler for the milk. This procedure also will relieve the divertee handler of accounting for this milk as his own producer milk and being responsible in all respects for the milk.

Diversions to another pool plant should not be permitted in the case of a pool supply plant or reserve supply plant. No proposal was presented to allow diversions from such plants to other pool plants and, in the absence of convincing evidence in support of such a provision, such diversions should not be permitted.

Cooperative association spokesmen testified to the desirability of recognizing the transfer of milk through a pipeline connecting a pool plant to an adjoining or adjacent facility which is not approved for the handling of Grade A milk, in lieu of transfer in a tank truck. The cooperative witness held that recognition of pipeline transfers would promote efficient handling of milk and facilitate the use of storage capacity in the Grade A part of any such plant or complex.

It is essential to the proper operation of the order that movements of milk between plants be fully and accurately reported to the market administrator and that reported movements be readily verifiable. Thus, the flexibility to be accorded handlers with respect to the manner of movement of milk is necessarily an administrative matter that must be left to the discretion of the market administrator.

As proposed by the merger proponents, all diverted milk for pricing purposes is treated as a receipt by the diverting handler at the location of the plant to which the milk was diverted. This treatment is presently applicable under the four separate orders and must be retained. The Act specifically provides for the pricing of milk "at the location at which delivery—is made."

(b) *Classification of milk.* The uniform classification plan that became effective on August 1, 1974, for each of the orders under consideration should be continued under the merged order.

All of the proponent cooperative associations supported the continuation of the current classification plan, which was developed on the basis of very extensive hearings that had been held on this issue relative to 39 orders. For this reason, little testimony was presented at the merger hearing concerning the details of the classification provisions. There was no testimony presented in opposition to the plan.

(c) *Class I price and location adjustments—Upper Midwest Marketing Area.* The Class I price in "Zone 1" of the Upper Midwest marketing area should be the basic formula price for the second preceding month plus a Class I differential of $1.12. It should continue to be announced on the fifth day of the preceding month.

To provide an appropriate pricing structure for this market, four pricing

zones should be defined. The location adjustments for each zone (which may include territory that is not part of the "marketing area"), the resulting Class I differential, and the territory that should be included in each zone are as follows: (See Map):

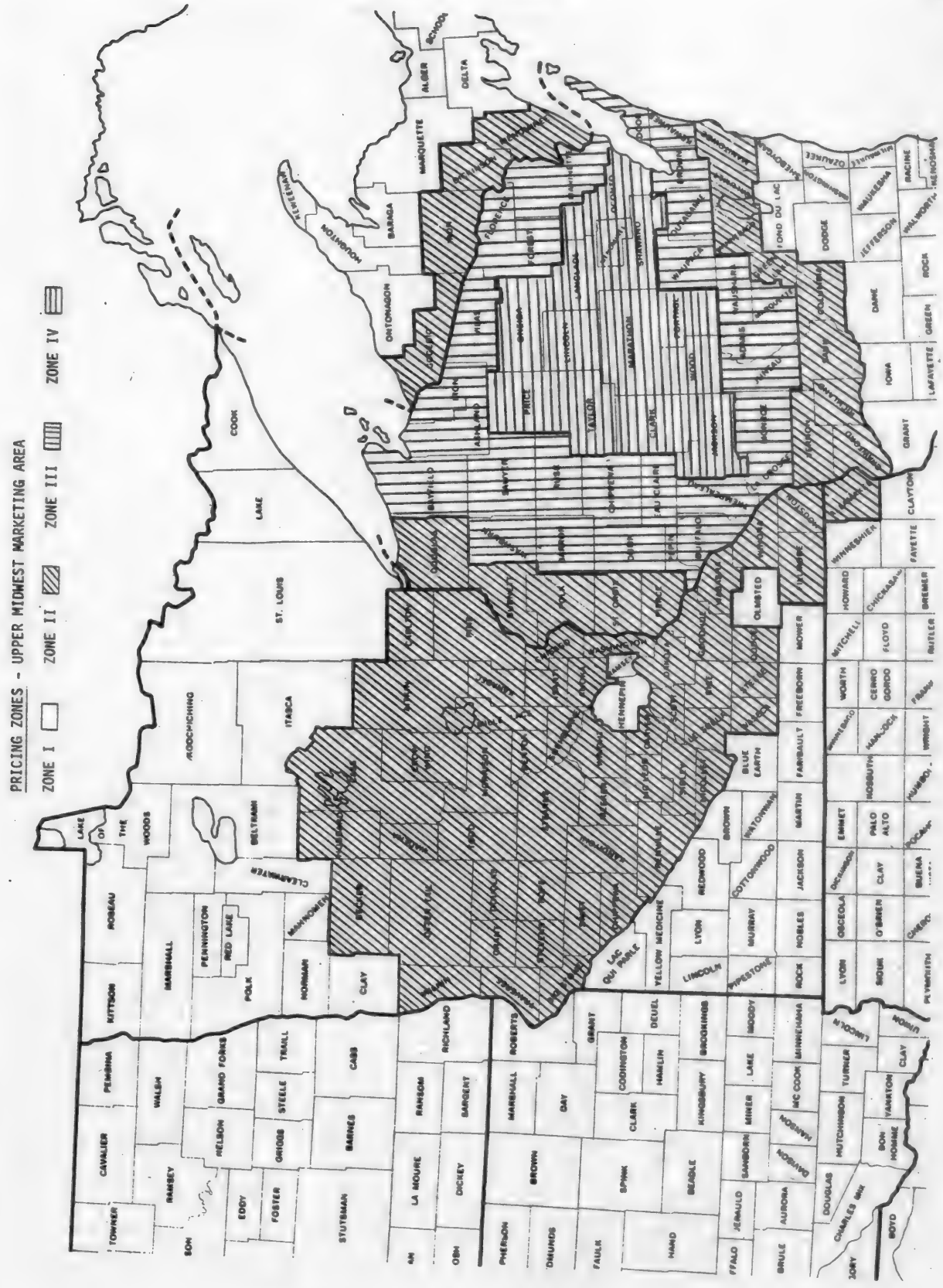
ZONE 1

Adjustment: None.
Differential: $1.12.
Territory: All of the territory, either within or outside the marketing area, not included in Zones 2, 3, and 4.

ZONE 2

Adjustments: Minus 6 cents.
Differential: $1.06.
Territory:
(1) The Minnesota counties of:

Aitkin	Mille Lacs
Anoka	Morrison
Becker	Nicollet
Benton	Otter Tail
Big Stone	Pine
Carlton	Pope
Carver	Ranville
Cass	Rice
Chippewa	Scott
Chicago	Sibley
Crow Wing	Sherburne
Dakota	Stearns
Dodge	Steele
Douglas	Stevens
Fillmore	Swift
Goodhue	Todd
Grant	Traverse
Houston	Wabasha
Hubbard	Wadena
Isanti	Waseca
Kanabec	Washington
Kandiyohi	Winona
Le Seur	Wilkin and
McLeod	Wright;
Meeker	


PRICING ZONES - UPPER MIDWEST MARKETING AREA
ZONE I
ZONE II
ZONE III
ZONE IV

(2) The Wisconsin counties of:

Burnett	Manitowoc
Calumet	Pierce
Columbia	Polk
Crawford	Richland
Douglas (except the city of Superior)	St. Croix
	Sauk
	Vernon
Green Lake	Winnebago.

(3) The Michigan counties of Dickinson, Gogebic, Iron, and Menominee; and
(4) The Iowa county of Allamakee.

ZONE 3

Adjustment: Minus 10 cents.
Differential: $1.02.
Territory:

(1) The Wisconsin counties of:

Adams	La Crosse
Ashland	Kewaunee
Barron	Marinette
Bayfield	Marquette
Brown	Monroe
Buffalo	Outagamie
Chippewa	Pepin
Door	Rusk
Dunn	Sawyer
Eau Claire	Trempealeau
Florence	Washburn
Forest	Waupaca
Iron	Waushara and
Juneau	Vilas.

ZONE 4

Adjustment: Minus 16 cents.
Differential: $.96.
Territory:

(1) The Wisconsin counties of:

Clark	Oneida
Jackson	Portage
Langlade	Price
Lincoln	Shawano
Marathon	Taylor and
Menominee	Wood.
Oconto	

The revised Eastern South Dakota marketing area should have a Class I differential of $1.40. Minus location adjustments should be provided for plants located in Minnesota, North Dakota, or that portion of South Dakota north of U.S. Highway 90. Such adjustments should be based on the distance from the nearer of the Post Offices of Mitchell or Sioux Falls, South Dakota, and should be computed at the rate of 1.5 cents per 10 miles based on the shortest hard-surfaced highway distance as measured by the market administrator.

The pricing structure summarized above differs in many respects from what was proposed and from what now exists under the five separate orders.

Presently, the Class I differential under the Southeastern Minnesota-Northern Iowa order is $1.06 throughout the marketing area, and there are no location adjustments. The Class I differential under the Minneapolis-St. Paul order is also $1.06, but the price is reduced by 6 cents beyond 35 miles of St. Paul, Minnesota, and by an additional 1.5 cents per 10 miles beyond 45 miles of St. Paul.

The Duluth-Superior order now has a differential of $1.10 which applies to plants within 55 miles of Duluth, Minnesota, or Ashland, Wisconsin. Between 55 and 65 miles from the nearer of these points, the price is reduced 8 cents; and it is reduced an additional 1.3 cents per 10 miles beyond 65 miles of the basing point.

The Minnesota-North Dakota order currently has a Class I differential of $1.30 which is applicable in the "base zone." Location adjustments are computed at the rate of 1.2 cents per 10 miles from the perimeter of the base zone. The location adjustment so computed is subtracted for a plant located in the State of Minnesota and is added for a plant located in either North Dakota or South Dakota.

The Class I differential under the Eastern South Dakota order is now $1.50 for plants located within 100 miles of Aberdeen, Huron, Mitchell, Sioux Falls, or Watertown, South Dakota. Between 100 and 110 miles, the location adjustment is minus 15 cents; and beyond 110 miles, the price is reduced an additional 1.5 cents for each additional 10 miles distance.

The several pricing structures proposed by proponents differ in many respects from each other and from that now existing under the separate orders.

Land O'Lakes Cooperative, Inc., proposed a Class I differential of $1.25 that would apply in the present Southeastern Minnesota-Northern Iowa marketing area, the present "base zone" of the Minnesota-North Dakota order, and within 35 miles of Rochester, Minnesota, St. Paul, Minnesota, and Fargo, North Dakota. Outside of this territory, the price would be reduced at the rate of 1.5 cents per ten miles beyond 35 miles of Rochester, Fargo, or St. Paul, except that, in the States of North Dakota and South Dakota, the location adjustment would be added rather than subtracted from the Class I differential.

Mid-America Dairymen, Inc., originally proposed a pricing structure somewhat similar to the Land O'Lakes proposal, but with a Class I differential of $1.18. In its brief, the cooperative modified its proposal by requesting a differential of $1.25 that would apply throughout the marketing area.

A third major proponent, National Farmers Organization, proposed a five-zone Class I pricing structure with a Class I differential that ranges from $1.26 in eastern Minnesota-western Wisconsin to $1.50 in the present Eastern South Dakota marketing area. For plants located outside the proposed marketing area, there would be no location adjustment except in that portion of Wisconsin outside the marketing area. In this area, the location adjustment would be computed at the rate of 2 cents per 10 miles from the nearest point in the perimeter of the marketing area. Under the NFO proposal, there would be no location adjustments applicable to the blended price to be paid to producers delivering their milk to any plant in the marketing area.

Other pricing proposals were made by handler representatives. Three proprietary handlers under the Eastern South Dakota order requested that the Class I differential of any merged marketing area be set at a level equal to the Class I differential in Eastern South Dakota. A handler spokesman representing the Dairies Federation of Minnesota testified in support of a single uniform Class I price with no provision for location adjustments. Another Minnesota handler representative proposed a Class I differential of $1.24 with no location adjustments to be applicable in western Wisconsin and in Minnesota.

In establishing a pricing structure for the proposed marketing area, it is necessary to focus on two primary considerations: (1) What Class I price level is necessary to "insure a sufficient quantity of pure and wholesome milk"? and (2) What price structure is needed to insure Class I price alignment with neighboring marketing areas?

With regard to the first point, it is clear from reviewing the record evidence that the proposed marketing area is an extremely heavy milk-producing area. In 1974, more than 4.2 billion pounds of milk were pooled under the four orders proposed to be merged. Of this total, only 1.4 billion pounds, or roughly 33 percent, were used in the form of fluid milk products (Class I). The percentage of Class I utilization for this group of markets has been declining steadily for the past six years. In 1970, the weighted average Class I utilization for the combined markets was 41 percent; in 1971, 39 percent; in 1972, 40 percent, in 1973, 39 percent; and in 1974, 33 percent.[3]

Under these circumstances, there is no basis for increasing the Class I level in the combined and expanded marketing area. The adopted $1.12 Class I differential, in conjunction with the location adjustments prescribed, will provide essentially the identical Class I returns under the merged market as presently exists in the four separate markets. This price level can be expected to assure adequate supplies of Grade A milk for the combined marketing area.

Witnesses for Land O'Lakes, Inc., and Mid-America Dairymen, Inc., testified that a $1.25 Class I differential should be adopted because producers are now experiencing increased hauling costs. While it is true that hauling costs have increased since the present Class I differentials were adopted, this cannot be a basis for increasing the Class I differential in this combined market.

The Class I price is computed by adding the Class I differential to the basic formula price. The latter reflects the average price paid by unregulated manufacturing plants for manufacturing grade milk in Minnesota and Wisconsin. Presumably, any increased hauling costs are reflected in the price paid to producers for manufacturing grade milk in the area and, through the basic formula price, to producers under the Federal orders. In view of this, the higher farm to plant hauling cost does not support changing the returns for Grade A milk relative to manufacturing grade milk.

As previously indicated, the amount of Grade A milk in this area has been increasing relative to demand, as shown by the declining Class I utilization. Hence,

[3] Official notice is taken of *Federal Milk Order Market Statistics*, Annual Summary for 1974, Agricultural Marketing Service, U.S. Department of Agriculture.

there is no necessity for raising the Class I differential above the average level now existing in these markets.

LOCATION ADJUSTMENTS

The National Farmers' Organization proposed a Class I pricing structure which they testified would improve the Class I price relationships that now exist within the proposed merged marketing area and that would improve Class I price alignment with surrounding Federal order markets. Their proposed pricing structure would essentially retain the present Class I price level in the Minnesota-North Dakota and Eastern South Dakota marketing areas; provide new pricing zones for the unregulated territory in north central Minnesota and southwestern Minnesota; and create a new pricing zone comprising the present Southeastern Minnesota-Northern Iowa, Minneapolis-St. Paul, and Duluth-Superior marketing areas (including some unregulated territory in western Wisconsin).

One NFO witness testified that an ideal Class I price structure for the merged marketing area would be a Uniform Class I price throughout the marketing area, provided the Secretary can work it out with due regard to Class I pricing in surrounding Federal order markets. The testimony of the other cooperative proponents also suggests the desirability of a Class I price level throughout the marketing area with a minimum of variation. NFO was concerned about alignment with surrounding orders; LOL (in its brief) was concerned that a uniform Class I price would prove to be a hardship on proprietary handlers operating supply plants; and Mid-Am., while originally proposing location adjustments, in its brief modified its proposal to provide a uniform Class I price throughout the marketing area. As previously mentioned, various handler representatives also proposed uniform Class I prices and the elimination of location adjustments.

The pricing scheme recommended herein is directed toward meeting all of these conditions insofar as is possible; it provides a minimum of price differences in the market so that competing distributing plants to be regulated will have essentially the same raw product cost under the terms of the orders; it provides "location adjustments" to encourage transportation of milk, but only to the extent needed to cover transportation of milk from the closest sources of production; it complements the practice of most cooperative associations in the market of returning to their producer members a flat price regardless of their location; and it provides an appropriate price alignment with surrounding Federal order markets.

Unlike other markets where milk may be transported a substantial distance to the principal population centers, the proposed marketing area encompasses much of the heaviest milk production area of the country. Accordingly, there is abundant milk available within a short distance from the principal areas of consumption. In the Minneapolis-St. Paul area, for example, there is enough Grade A milk available in the counties bordering Hennepin (Minneapolis) and Ramsey (St. Paul) Counties to provide all the fluid milk consumed there, plus an ample reserve. Similarly, there are ample supplies of milk in the counties surrounding Rochester (Olmsted County), the Duluth-Superior area (St. Louis and Douglas Counties), and the Fargo-Moorhead-Grand Forks area.

With ample milk available within close proximity to the major population centers in the marketing area, there is no necessity to encourage the transporting of milk from more distant areas of the milkshed. The present provisions of the Minneapolis-St. Paul order, for example, provide a transportation allowance on Class I milk at the rate of 1.5 cents per ten miles from the basing points, regardless of distance from such plant. Thus, reimbursement for transportation is equally available to a supply plant 50 miles from the Twin Cities or 150 miles away. With this arrangement, a Minneapolis handler purchasing Class I milk from a supply plant is indifferent whether the milk comes from a nearby plant or a distant plant, since the additional transportation cost attributable to the difference in plan locations is reflected in the minimum order prices.

The pricing structure here adopted establishes zones which provide a limited transportation allowance for milk movement. Zone 1* ($1.12 differential) contains the major population centers in Minnesota and North Dakota and almost all of the distributing plants supplying such area. The $1.06 zone (Zone 2), by contrast, is rural in character and contains most of the heavy milk producing area and most of the manufacturing plants.

Since there is not enough milk produced within Zone 1 to satisfy all of the fluid demand on a day-to-day basis through the year, it is necessary to provide a price differential to implement the movement of a supplemental supplies from Zone 2. To this end, Zone 2 is priced 6 cents below Zone 1. At a hauling rate of 1.5 cents per 10 miles, 6 cents will accommodate the transportation of milk from within 40 miles of a plant in the $1.12 zone. Under existing circumstances, there is no need to accommodate the movement of milk from beyond this distance to insure all of the Grade A milk necessary to meet fluid demand of plants in Zone 1.

Bordering the proposed marketing area on its eastern border is the Chicago Regional marketing area. The Chicago Class I price zoned to this area results in a price 90–96 cents over the basic formula price at various points bordering the proposed marketing area. To provide alignment, therefore, it is necessary to have a comparable price in this segment of the market under the proposed order. Accordingly, Zone 4, which comprises four now unregulated Wisconsin counties (three of which are to be included in the Upper Midwest marketing area) and eight Wisconsin counties that are part of the Chicago Regional marketing area, requires a Class I differential of 96 cents.

Between Zone 2 ($1.06) and Zone 4 ($.96), an intermediate zone is required to provide a graduated price adjustment and thus to avoid abrupt and substantial price changes which could encourage unstable marketing conditions. For this purpose, a location adjustment of minus 10 cents (which would yield a Class I differential of $1.02) is appropriate. The presently unregulated portion of this part of the extended marketing area contains several partially regulated and unregulated distributing plants with sales throughout a broad segment of the area. Two of the largest of these plants are located in Barron and Eau Claire Counties. The distribution areas of these two plants virtually overlap, making it desirable to include both of these plants in the same zone.

The Minnesota-Wisconsin area represents an alternative supply area for virtually all markets east of the Rockies. For this reason, it is imperative that Federal order Class I prices be appropriately aligned so that the milk will move only when necessary. A Class I differential for the proposed marketing area that is too low would cause local milk to seek more remunerative distant outlets.

The $1.12 differential here adopted will align prices with those Federal orders also drawing milk supplies from central and southern Minnesota. The Des Moines order has a Class I differential of $1.09 at Rochester, Minnesota, and at Mankato, Minnesota. The Nebraska-Western Iowa Class I differential, based on mileage from Omaha, is also $1.09 at Rochester and $1.16 at Mankato. The Kansas City order Class I differential is $1.12 at Rochester and $1.13 at Mankato. A $1.12 differential for the extended market will improve price alignment with the North Central Iowa marketing area which now has a Class I differential of $1.25 in the counties adjacent to the southern boundary of the proposed marketing area.

Under current provisions of the Minnesota-North Dakota order, plus location adjustments apply in that part of North Dakota that is outside the base zone (as now defined in that order). Present circumstances do not warrant maintaining the existing plus location adjustments in the North Dakota segment of the marketing area. From December 1967 to November 1973 the amount of Order 60 milk pooled in North Dakota in the base zone declined by 19 percent, while that milk in the plus location adjustment area increased by 71 percent. Moreover, from December 1967 to November 1973, the number of supply plants in the plus location adjustment zone went from zero to six. As a result, milk received at plants in the plus location adjustment area increased by 674 percent in this period.

*All of the zones proposed herein extend into neighboring marketing areas, overlapping comparable pricing zones under other Federal orders. Unless otherwise specified, however, the discussion of pricing zones refers only to the territory within the proposed "Upper Midwest" marketing area.

The effect of these plus location adjustments is to raise the uniform price to producers outside the base zone relative to those delivering their milk to plants inside the base zone. Consequently, there is a disincentive to deliver milk to the base zone directly from the farm when a higher price is available by delivering it to one of the supply plants outside the base zone. This practice is contrary to orderly and efficient marketing of milk.

To protect the integrity of regulation under Federal orders, it is generally necessary, either through the allocation procedure in the assignment of milk receipts to classes of use or in the application of location adjustment credits, to protect the pool from bearing the costs of moving milk to the central market for other than Class I use. This is usually accomplished by providing that Class I use in each plant is assigned first to direct receipts and then in sequence to receipts from other plants, starting with those plants nearest the market.

With the continuing conversion of manufacturing grade milk to Grade A in this upper midwest area, distributing plants can be expected to have ready access to their required milk supplies on a direct-shipped basis. Furthermore, in view of the liberal pooling standards adopted (which will remove any necessity for the movement of milk between plants solely to attain pooling status) and the limited location adjustments provided (6 cents for most plants, with the maximum being 16 cents), it may be presumed that, when milk is transferred to pool distributing plants, such transfers reflect a need for milk that cannot otherwise be met. In view of this, the interests of both handlers and producers will best be served by allowing the transferee handler flexibility in designating the milk to be assigned to Class I. This will insure that the difference in location value between transferor and transferee plant will be available to the transferor handler as an offset to the cost of moving any milk supplies.

EASTERN SOUTH DAKOTA MARKETING AREA

The Eastern South Dakota order now has a Class I differential of $1.50 applicable at each of its four fully regulated distributing plants. This price is clearly out of alignment with prices which have been effective in other parts of the area here being merged and also with prices in markets to the south. In substantial measure, it has been perpetuated by the particular institutional structure of the market. The record strongly suggests that producers in the Eastern South Dakota market have not, in fact, received returns reflecting the use value of their milk at the prescribed order prices, and that the higher returns from this market have been used to enhance returns of dairy farmers in Minnesota and North Dakota.

A South Dakota distributing plant operator representing himself and two other South Dakota handlers testified that the present 44-cent difference between Minneapolis-St. Paul ($1.06 differential), Southeastern Minnesota-Northern Iowa ($1.06 differential) and Eastern South Dakota ($1.50) has caused havoc in Eastern South Dakota, resulting in the demise of many small distributing plants over the years and the passage of a Minimum Retail Milk Price law to stem the inflow of cheaper Minnesota milk. These handlers proposed providing the same Class I differential for any merged order as would apply under the Eastern South Dakota order, but preferably increasing the Minnesota differentials to the $1.50 level.

The average annual Class I utilization in the Eastern South Dakota market has declined from 67 percent in 1969 to 46 percent in 1974. With the percentage of total milk production approved for Grade A averaging around 35 percent in this market, there is a growing potential for substantially increased Grade A supplies here. Because of its location with respect to markets to the south, i.e., Nebraska-Western Iowa and Kansas City, for example, the price must be established higher than that in the Upper Midwest market. But in the interest of producer and handler equities and overall price alignment, the price must be reduced from the existing level.

To provide continuing orderly marketing among the neighboring Federal order markets in the general area, Class I differentials must be structured to reflect costs in transporting milk between surplus markets and deficit markets. The Eastern South Dakota market is sandwiched between the Upper Midwest market on the north and east, and the Nebraska-Western Iowa market to the south. With a Class I differential is $1.12 on its northern border and a Class I differential of $1.60 on its southern border, the Eastern South Dakota market clearly must have a transitional pricing structure to provide for the orderly movement of milk.

For this reason, the Eastern South Dakota market, as modified herein, should have a Class I differential of $1.40 applicable at Mitchell, Sioux Falls, and all other points south of U.S. Highway 90. For plants located in Minnesota, North Dakota, or that portion of South Dakota north of U.S. Highway 90, the Class I price should be adjusted downward at the rate of 1.5 cents per 10 miles from the nearer of Sioux Falls or Mitchell. This will provide for a smooth transition of pricing between the Upper Midwest and Eastern South Dakota markets. It will considerably improve current inter-order price alignment, while continuing to assure an adequate supply of milk for South Dakota handlers.

In conjunction with the above change in pricing structure for the Eastern South Dakota market, a change should be made in the pricing point of producer milk diverted from a pool plant to a nonpool plant.

Presently, such milk is priced at the plant from which diverted. With virtually a flat price throughout the marketing area (presently there are no location adjustments within 100 miles of Aberdeen, Huron, Mitchell, Sioux Falls, and Watertown) it has mattered little if diverted milk were priced at the plant from which diverted or at the plant to which diverted. However, with the pricing structure adopted herein, the pricing point on diverted milk will be an important factor in the movement of milk supplies.

When diverted milk is priced at the plant from which diverted, there is always the incentive for association of distant milk with plants in the higher priced zones even though such milk is not needed at such plants for fluid use. This unecessary movement of milk results in inefficient marketing practices. It also reduces the return to producers whose milk is used on a regular basis at pool distributing plants in favor of more distant producers whose milk is used principally for manufacturing uses. The latter milk, although only occasionally transported to the central market, is priced as though it were received there every day.

The Act specifically provides for the pricing of milk "at the location at which delivery * * * is made." Thus, the change in pricing point will also insure compliance with the current interpretation of the Act.

Pricing milk not needed for Class I use. The Class II price under the merged order should be the basic formula price for the month plus 10 cents. The Class III price should be the basic formula price for the month. These prices should be announced by the 5th day after the month to which they apply.

These prices were proposed by all of the proponent organizations and are now applicable under each of the orders to be merged. They were adopted for all of these orders in conjunction with the 39-market classification proceedings referred to earlier in this decision and are appropriate for the identical reason for which they were adopted in the separate orders.

Butterfat differential. A single butterfat differential should apply under the merged order. It should be computed by multiplying the average Chicago 92-score butter price for the month by 0.115 and rounding such amount to the nearest 0.1 cent. The differential should be announced by the market administrator by the 5th day after the end of the month in which it applies. This differential is now applicable under the separate orders and was adopted in conjunction with the uniform classification plan now in use.

Land O'Lakes proposed that the butterfat differential be reduced to 10.5 percent of the Chicago 92-score buttter price.

Mid-America Dairymen, Inc., which originally supported a butterfat differential of .115 (the one now in the individual orders), changed its position taken at the hearing and, in its post hearing brief, supported the position of Land O'Lakes. Several proprietary handlers also expressed support of the idea. A proprietary handler and one producer cooperative association filed briefs in opposition to the proposal.

A Land O'Lakes spokesman testified that the current butterfat differential

prices surplus (Class III) cream $2.17 per hundredweight above its market value when manufactured into butter. Thus, he said, a fluid milk handler buying whole milk is at a disadvantage compared to one who buys skim milk since the former must absorb a loss on the cream portion of his milk.

It is unlikely that a fluid milk handler buying skim milk actually realizes this advantage. If there is a loss to be absorbed on surplus cream, it is likely that such loss is reflected in the price the handler must pay a cooperative association to obtain skim milk.

Any modification in the level of the butterfat differential would have wide-ranging repercussions since the market for butter, nonfat dry milk, and cheese is national in scope. Handlers in surrounding markets would be adversely affected by such a change in the pricing in this market. Moreover, as was pointed out in one brief, handlers manufacturing products that require milk testing below 3.5 percent would be faced with a cost increase that would put them at a competitive disadvantage compared to handlers in other markets.

The matter of appropriate butterfat differential was an issue dealt with fully in the 39-market proceedings. This record does not furnish a basis for modification of the provision so recently adopted for the several orders involved. Accordingly, the proposal is denied.

(d) *Distribution of proceeds to producers.* A marketwide pool should be provided under the merged order as a means of equitably distributing among all producers in the market the total proceeds derived from the sale of producer milk by all regulated handlers. Under marketwide pooling, one uniform price, adjusted for location of the plant to which the milk was delivered, is paid to all producers regardless of how a particular producer's milk is used by the handler to whom it is delivered. By receiving payment at the market uniform price, each producer shares equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. This type of pooling is now being used in all four of the individual markets to be merged and was supported by all parties of interest for use under the merged order.

COMPUTATION AND ANNOUNCEMENT OF UNIFORM PRICE

A uniform price to producers based on estimated pool values should be computed each month by the market administrator and announced by the 11th day after the end of the month.

Presently, three of the individual orders provide for announcement of the previous month's uniform price by the 12th day of the month. The Minneapolis-St. Paul order provides for such announcement of the uniform price by the 15th day of the month.

Land O'Lakes, Inc., proposed a procedure whereby the market administrator would estimate a uniform price, which he would then announce by the 5th day after the month. A Land O'Lakes spokesman testified that announcement of the uniform price by the 5th day of the month would be a convenience to his organization in establishing producer pay prices. He stated that presently Land O'Lakes sets producer pay prices before the 15th day of the month, but this requires estimating gross returns in the various markets involved. The market administrator, he said, is in a much better position to estimate these returns since he has more information available to him.

The market administrator for the Minneapolis-St. Paul and Minnesota-North Dakota orders testified that his office has estimated the uniform price on an informal basis since June 1973. During the period from June 1973–October 1974 (no estimate was made for February 1974) these estimates were precisely correct during four months, one cent above or below the actual price during seven months, 2–3 cents off during four months, and off by 6 cents during one month when Key personnel were out of the office. On the average, the estimates differed from the actual price during this period by one half cent. They have been available to any interested person between the 5th and 12th day of the month.

The proposal to compute an estimated uniform price should be adopted. However, instead of being announced on the 5th day of the month, it should be announced on the 11th day of the month, one day after handler reports are due.

Several advantages will result in providing for computation of a uniform price on an estimated basis. Presently, the market administrator cannot compute a uniform price until the handlers' reports of receipts and utilization have been submitted. Often, depending on the fall of weekends and holidays, this does not allow enough regular working days to process the reports and announce a price by the 15th day of the month. As a result, overtime is regularly required in order to meet the deadline.

By allowing the market administrator to estimate the total amount and value of milk in the pool he has from the 5th day of the month, when the basic formula price for the preceding month is announced, until the 11th of the month to make his calculations and compute the uniform price. In addition, removing the uniform price computation from the processing of handlers' reports will allow the latter job to be done much more efficiently since the reports will no longer have to be processed by stages but, instead, may be processed in their entirety as they are received.

A final advantage to announcing the uniform price on the 11th day of the month is that it will permit earlier payments into and out of the producer-settlement fund and earlier payments to producers for their milk.

Payments to producers. The merged order should continue to require handlers to make payments to cooperative associations and producers for milk received. This is now the method of payment under each of the four orders.

Land O'Lakes Cooperative, Inc., proposed a payment plan whereby all handlers receiving milk from a cooperative association would pay their total pool obligation for such milk to the market administrator who, in turn, would pay the cooperative associations. Under their plan, proprietary handlers would pay their independent producers, however.

Proponent's witness testified that requiring handlers to pay the market administrator for milk received from cooperative associations would assure that all handler obligations and producer payments would be made on time and that such payments would be uniform. He further stated that, because cooperative associations continually fear a loss of their position in the market and, therefore, their ability to pool member milk, there is a tendency for cooperatives to be lenient with their Class I customers in the matter of making timely payments. This, he said, results in the slow-paying milk distributor realizing a cost advantage over competitors who make timely payments for their milk receipts. He related one experience in the spring of 1974 in which a handler fell further and further behind in his payments, ultimately falling into bankruptcy and leaving the cooperative with a large and uncollectable account receivable.

With the liberal pooling standards provided under the merged order, the circumstances leading to such large and uncollectible accounts should be avoided. It is expected that payments to producers will be made promptly, since access to Class I outlets will not be necessary to pool and a cooperative association may reasonably withhold supply to any handler who fails to pay promptly. If the problem leading to this proposal is resolved, there will be no need for channeling payments through the market administrator as proposed.

Under the terms adopted herein for the merged order, milk received from a cooperative acting as a handler for farm bulk tank milk will be treated as an interhandler transfer but will be classified pro rata with producer milk at the transferee plant. The pool plant operator will be obligated to the producer-settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value. This is in contrast to the procedure now followed, whereby the cooperative is responsible to the pool at class prices for milk delivered to a pool plant. In its capacity as the operator of a pool plant, a cooperative association will continue to account to the pool at class prices for milk transferred to other pool plants. The transferee handler will pay the cooperative the class prices for such milk.

The order should require a proprietary handler to make a partial payment to a cooperative association on or before the 3rd day after the end of the month for milk received during the first 15 days of the month from producers who are members of such cooperative association and who have authorized the association to

collect such payment for them. For purposes of the partial payment, no distinction should be made between milk coming directly from the farm or by transfer from a pool plant operated by a cooperative. The rate of partial payment should be no less than the uniform price for the preceding month. A proprietary handler should also be required to make a partial payment to nonmember producers for milk received during the first 15 days of the month. Such payment should also be made on or before the 3rd day after the end of the month and should be at the rate of the uniform price for the preceding month.

The provisions proposed by the National Farmers' Organization and Mid-America Dairymen, Inc., would have required that the partial payment be at the Class I price for the current month rather than the uniform price for the preceding month. If partial payment were made at the Class I price, it would leave a disproportionately smaller share available to producers at the end of the month. Moreover, since no handler in this market has 100 percent Class I utilization, partial payment at the Class I price in most cases would be in excess of the value of milk received. For this reason, partial payment should be at the uniform price for the preceding month.

Final accounting for milk from producers and cooperative bulk tank handlers will be completed after the end of the month. Handlers will be required to submit to the market administrator a report of all receipts and utilization by the 10th day after the end of the month. The uniform price is announced by the 11th day. On the 11th day, handlers are required to pay cooperative associations for all skim milk and butterfat received from pool plants operated by such cooperative associations at not less than the class prices, as adjusted by the butterfat differential, applicable at the location of the receiving handler's pool plant (except that if such pool plant is in a lower priced zone than the cooperative association's plant, the Class I price will be at the location of the transferor plant), less the amount of the partial payment.

Handlers whose pool obligation exceeds the value of their producer milk at the uniform price should be required to make payment to the producer-settlement fund on or before the 15th day after the end of the month. On or before the 17th day after the end of the month, the market administrator will make payments to handlers whose total pool obligation is less than the value of their producer receipts at the uniform price.

Final payment by proprietary handlers to cooperative association handlers on farm bulk tank milk will be made on or before the 18th day after the end of the month. Such payment will be at not less than the uniform price for the month, less the amount of partial payment made for milk received during the first 15 days of the month. On or before the 18th day after the end of the month, handlers will also make final payment to each producer for milk which was not caused to be delivered by a cooperative association acting as a handler on farm bulk tank milk. Such payment will also be at the uniform price for the month, less the amount of partial payment for milk received during the first 15 days of the month.

This schedule of reporting and payment dates adopted is intended to insure producers prompt payment for their milk. The payment dates being adopted are somewhat earlier than those proposed by Mid-America Dairymen, Inc., and the National Farmers Organization, but are later than those proposed by Land O'Lakes. They recognize that reasonable time is required for handlers to file reports and make payments to the market administrator by mail. This is particularly significant in view of the large and rural geographical area encompassed by the merged order.

The president of the Dairies Federation of Minnesota proposed that the payment date be pushed back from the 20th to the 25th of the month. He stated that the billing date for retail customers was on the 15th of the month and that payments from such customers are not received until the 25th day of the month. Consequently, he said, handlers are faced with additional costs in the form of interest on bank loans if they are required to pay producers before they receive payment from their retail customers.

There is no foundation for this position. As it is, producers must wait until the 18th day after the end of the month before receiving the final payment for their milk. The cost of any short term loans that a handler may need to meet order obligations must be considered a necessary business expense to be borne by the handler. There is no reason why producers should be required to bear any of the handler's business expenses. Accordingly, the proposal should not be adopted.

SERVICE CHARGES

Land O'Lakes Cooperative, Inc., proposed that service charges be incorporated in the order to accommodate recovery of a cooperative association's costs for field service, quality testing, coordination of milk movements, disposition of reserve supplies, producer payrolls, and operation and maintenance of storage and handling facilities. The proposal would provide a charge of 10 cents per hundredweight on milk delivered directly from the farm to a handler's plant and 18 cents per hundredweight on milk delivered from a supply plant to a handler's plant.

A Land O'Lakes witness testified that most cooperative associations supplying proprietary handlers are able to recoup the cost for various services rendered through service charges levied by the cooperative. However, not all cooperatives in the upper Midwest levy such a charge and the charges that are made vary from organization to organization and possibly from customer to customer. Often, this witness stated, the urgency to pool member milk may cause a cooperative to reduce or eliminate the charge in order to retain a Class I customer. Consequently, a milk distributor who pays a small charge or none at all has a procurement cost advantage over a competitor buying milk from a cooperative that does charge for services rendered. The witness concluded that this situation is not in keeping with the legislative requirement of the Agricultural Marketing Agreement Act that "prices shall be uniform to all handlers."

Proponent emphasized that the pressure to retain Class I customers and to keep member producer milk pooled made it difficult to recoup the cost for various services rendered. Under the proposed pooling standards, these pressures will be virtually eliminated. It will not be necessary to absorb bona fide service costs in order to keep milk pooled.

Accordingly, the Land O'Lakes proposal should not be adopted at this time.

(e) *Administrative provisions.—Interest payments on overdue accounts.* The merged order should provide for interest payments on handler obligations that are overdue. Such interest should be at the rate of three-fourths of one percent per month (9 percent annually). Interest should apply beginning the day following the date on which payment of an obligation is due.

It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make the required payments to producers. An interest charge on overdue accounts should provide an incentive to handlers to make their payments on time. Moreover, handlers who pay late are, in effect, borrowing money from producers. Without interest payments, handlers delinquent in their payments would have a financial advantage relative to those handlers making timely payments.

It should be noted that interest payments are not a substitute for prompt payments by handlers. Those delinquent in their obligations will be subject to legal enforcement action as authorized under the Act.

The adopted interest rate (three-fourths of one percent per month) was proposed by all three merger proponents. This rate is currently applicable under the Southeastern Minnesota-Northern Iowa and Minneapolis-St. Paul orders. One proprietary handler suggested a penalty equal to the prime rate in effect, plus one percent, on all payments 15 days or more past due. This proposal, while somewhat more flexible than the provision adopted herein, does not differ substantially from it at present interest rates. Since no particular problem was presented regarding the present provision, there is no reason to depart from the present order language proposed by the merger proponents.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the merged order should be 3 cents per hundredweight. The market administrator must have adequate funds to perform the necessary function of administering the merged order.

Currently, the maximum rates under the separate orders are 4 cents per hundredweight under the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, and Duluth-Superior orders, and 3 cents per hundredweight under the Minneapolis-St. Paul order.

A maximum 3-cent rates under the expanded order should cover all necessary expenses the market administrator may occur in administration of the order. It is necessary, of course, that the administrator have adequate funds to perform all of those functions necessary for effective administration. However, if experience indicates that the merged order can be administered at a lesser rate, the Secretary, under the terms of the order, may adjust the effective rate of assessment without the necessity of a hearing.

The administrative assessment should apply to all receipts within the month of milk from producers, including milk of such handler's own production, any other source milk allocated to Class I (except milk so assessed under another Federal order), milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, and milk transferred in bulk to a pool plant from a plant owned and operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts for which the assessment is applicable, and for which such assessment is not to be paid by other handlers.

Presently, of the four orders, only the Southeastern Minnesota-Northern Iowa order places on proprietary handlers the administrative assessment on milk received from a cooperative association in its capacity as a handler on farm bulk tank milk or as a handler or plant milk transferred. Land O'Lakes, Inc., proposed this procedure for the merged order.

The Act provides that the administrative cost of the order shall be borne by handlers. In this connection, it is apparent that Congress contemplated that, in any circumstance in which a proprietary handler purchased milk from a cooperative association, the assessment would be passed on to the proprietary handler. Otherwise, proprietary handlers would simply avoid the burden of administrative cost by purchasing milk only from cooperative associations, leaving producers to bear such cost. This practice would violate the mandate of the Act requiring minimum uniform prices to all handlers. Therefore, the new order should be clear on who is responsible for the administrative assessment on this milk.

When a cooperative association operates a processing plant or acts in the capacity of a handler diverting milk to nonpool plants or in the limited capacity as responsible handler with respect to farm bulk tank milk which it causes to be picked up at the farm and which is not received at any plant, it, of course, must be held responsible for the assessment payable on such milk.

Marketing service deduction. With respect to payments to producers, the order should provide for a maximum deduction of 5 cents per hundredweight for marketing services furnished by the market administrator. Such deductions are necessary to enable the market administrator to conduct an adequate marketing service program for producers supplying the market.

The maximum rates now for such services are 6 cents under the Southeastern Minnesota-Northern Iowa and Minneapolis-St. Paul orders, 5 cents under the Minnesota-North Dakota order, and 3 cents under the Duluth-Superior order.

The 5-cent rate, which is one cent below the rate proposed at the hearing, should permit the market administrator to conduct an adequate marketing service program for those producers not receiving such services (providing for market information to producers and verification of weights, sampling, and testing of milk purchased from producers) from a cooperative association. Experience indicates that these services can be performed at a rate considerably below the maximum now provided in the order. Therefore, a maximum rate of 5 cents should continue to provide adequate funds for these services.

The order should provide for the transfer of funds from a proprietary handler to a cooperative association when the latter is performing the marketing services for producers. The language suggested by proponents, which is the language now contained in the Minneapolis-St. Paul order, would merely direct that no money be withheld in the case of producers for whom a cooperative is performing the marketing services. This would be adequate when the handler pays the cooperative association for the milk and the cooperative then pays the producers. In this case, the cooperative could obviously withhold the market service fee. But in the case where the handler pays the producer directly, a provision is needed to provide for the transfer of funds from the handler to the cooperative to cover the marketing services performed. The language adopted herein, which is similar to language contained in the Minnesota-North Dakota and Southeastern Minnesota-Northern Iowa orders, specifically provides for this transfer of funds, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the orders effectively and equitably, the reserves in the administrative expense funds that have resulted under Orders No. 60, 61, 68, and 69 should be combined. Similar procedure should be followed with respect to the marketing service fund reserves of these individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order. With respect to the Eastern South Dakota administrative service fund, it should be retained under that order even though part of that marketing area is included in the merged area, since the reserve in that fund is for the purpose of performing audits of handlers reports and other administrative tasks with respect to handlers regulated under that order.

The money accumulated in the marketing service funds of Orders No. 60, 61, 68, and 69 is that which has been paid by producers for whom the market administrator is performing services. The Eastern South Dakota order has no marketing services provision. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Upper Midwest market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in Orders No. 60, 61, 68, 69, and the proportion of the unobligated producer settlement fund reserve of Order No. 76 associated with and attributable to the milk of producers in the month preceding the first month in which such producer milk becomes regulated under the merged order should be combined so that the producer-settlement funds under the merged order and Order No. 76 may be continued without interruption. The producers currently supplying handlers in the individual markets are expected to continue to supply milk to such handlers. The merged Upper Midwest market, which incorporates part of the present Eastern South Dakota market, is expected to result in the shift of regulation of an Aberdeen, South Dakota, plant from that market to the Upper Midwest market. Thus, monies now in the producer settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

PROVISIONS REQUIRING NO REVISION

Handlers and producers indicated that provisions of the Minneapolis-St. Paul and Eastern South Dakota orders for which they were proposing no changes were appropriate for the expanded marketing areas.

No testimony was presented indicating that the reasons set forth in the decisions providing for the adoption of such provisions were not equally applicable to regulation of the expanded marketing areas. For the reasons previously stated, the remaining unrevised provisions of the orders are appropriate for the extended orders and are hereby adopted.

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusion were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds; available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight (5 cents under the Eastern South Dakota order) or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1068.85 of the aforesaid tentative marketing agreement and the Upper Midwest order. (§ 1076.85 under the Eastern South Dakota order)

RECOMMENDED MARKETING AGREEMENTS AND ORDER AMENDING THE ORDERS

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders. The following order amending the orders, as amended, regulating the handling of milk in the Upper Midwest and Eastern South Dakota marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1068.1 General provisions.

DEFINITIONS

1068.2 Upper Midwest marketing area.
1068.3 Route disposition.
1068.4 Plant.
1068.5 [Reserved]
1068.6 [Reserved]
1068.7 Pool plant.
1068.8 Nonpool plant.
1068.9 Handler.
1068.10 Producer-handler.
1068.11 [Reserved]
1068.12 Producer.
1068.13 Producer milk.
1068.14 Other source milk.
1068.15 Fluid milk product.
1068.16 Fluid cream product.
1068.17 Filled milk.
1068.18 Cooperative association.

HANDLER REPORTS

1068.30 Reports of receipts and utilization.
1068.31 Payroll reports.
1068.32 Other reports.

CLASSIFICATION OF MILK

1068.40 Classes of utilization.
1068.41 Shrinkage.
1068.42 Classification of transfers and diversions.
1068.43 General classification rules.
1068.44 Classification of producer milk.
1068.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1068.50 Class prices.
1068.51 Basic formula price.
1068.52 Plant location adjustments for handlers.
1068.53 Announcement of class prices.
1068.54 Equivalent price.

UNIFORM PRICE

1068.60 Handler's value of milk for determining pool obligation.
1068.61 Computation of uniform price.
1068.62 Announcement of uniform price and butterfat differential.

PAYMENT FOR MILK

1068.70 Producer-settlement fund.
1068.71 Payments to the producer-settlement fund.
1068.72 Payments from the producer-settlement fund.
1068.73 Payments to producers and to cooperative associations.
1068.74 Butterfat differential.
1068.75 Plant location adjustments for producers and on nonpool milk.
1068.76 Payments by handler operating a partially regulated distributing plant.
1068.77 Adjustment of accounts.
1068.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1068.85 Assessment for order administration.
1068.86 Deduction for marketing services.

AUTHORITY: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1068.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1068.2 Upper Midwest marketing area.

"Upper Midwest marketing area" (referred to in this part as the "marketing area") means all territory within the boundaries listed below including all territory that is now, or in the future, occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area:

(a) The State of Minnesota, except the counties of Lincoln, Nobles, Pipestone, and Rock.

(b) In the State of Wisconsin, the counties of:

Ashland	Pepin
Barron	Pierce
Bayfield	Polk
Buffalo	Price
Burnett	Rusk
Chippewa	Sawyer
Clark	St. Croix
Douglas	Taylor
Dunn	Trempealeau
Eau Claire	Washburn

(c) In the State of North Dakota, the counties of:

Barnes	Pembina
Cass	Ramsey
Cavalier	Ransom
Dickey	Richland
Grand Forks	Sargent
Griggs	Steele
La Moure	Traill
Nelson	Walsh

(d) In the State of South Dakota, the counties of:

Brown	Marshall
Day	McPherson
Edmunds	Roberts
Grant	Walworth

(e) In the State of Iowa, the counties of:

Howard	Winnebago
Kossuth	Winneshiek
Mitchell (except the city of Osage)	Worth

§ 1068.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store or through a vending machine) of a fluid milk product classified as Class I, milk other than a delivery to a plant.

§ 1068.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1068.5 [Reserved]

§ 1068.6 [Reserved]

§ 1068.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means any plant:

(a) From which during the month:

(1) The total route disposition (except filled milk) as a percent of the total milk received in bulk form at such plant (excluding milk received as diverted milk from another pool plant) or diverted therefrom by the plant operator is at least equal to the marketwide Class I utilization percentage for the same month of the preceding year. (Upon the effective date of this order, the market administrator shall compute and announce the weighted average Class I utilization percentage for the four markets combined herein. Such computation shall be used in determining pooling standards pursuant to paragraph (a) and (b) of this section during the first year this order is effective.); and

(2) Not less than 15 percent of such receipts are disposed of as route disposition (except filled milk) in the marketing area; or

(b) That is approved by a duly constituted regulatory agency for the handling of Grade A milk, from which during the month the volume of fluid milk products shipped to pool plants qualified pursuant to paragraph (a) of this section as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than the marketwide Class I utilization percentage for the same month of the preceding year;

(c) That qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraph (a) or (b) of this section; or

(d) That is located in the marketing area and that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) At least one tank truck load of milk (not less than 45,000 pounds) has been shipped from the plant to a pool plant described in paragraph (a) of this section or to a comparable plant under another Federal order within the last 12 months, unless the plant is already qualified as a pool plant pursuant to this paragraph;

(2) The operator of the plant has filed a request with the market administrator for pool status at least 15 days prior to the first day of the month in which such status is desired effective. Once qualified as a pool plant pursuant to this paragraph, such status shall continue to be effective unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpol status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(3) The operator of the plant has agreed to supply a percentage of its milk (not to exceed the percentage of shipments required of a plant described in paragraph (b) of this section) to pool plants described in paragraph (a) of this section or to comparable plants under another Federal order in compliance with any announcement by the market administrator requesting such level of shipments. The market administrator may require such shipments from any designated plants qualified pursuant to this paragraph whenever he finds, after investigating on his own initiative or at the request of interested persons, that milk supplies for Class I use are needed from pool plants qualified under this paragraph. Failure to comply with any announced shipping requirement shall result in immediate loss of pool status for the plant pursuant to this paragraph. A plant losing pool status in this manner may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was lost; and

(4) Effective January 1, 1977, a plant must have been a pool plant under this order during each of the preceding months of September through December to be a pool plant under this paragraph during the following months of January through June.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to paragraphs (a), (b), or (c) of this section if the conditions of paragraph (e)(3) (i) and (ii) of this section are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1068.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to other order plants qualified on the basis of route disposition, than is disposed of from such plant in the Upper Midwest marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition; and

(ii) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part; and

(4) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1068.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act,

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

(e) "Governmental agency plant" means a plant owned and operated by a government institution which disposes of Class I milk in the marketing area solely for use on the premises or to its own facilities. Such plant shall be exempt from all provisions of this part.

§ 1068.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant of another handler in accordance with § 1068.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for

delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person who is a producer-handler;

(f) Any person in his capacity as the operator of an other order plant; and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1068.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of fluid milk products during the month by transfer from pool plants of other handlers or from other order plants;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(d) The maintenance, care, and management of the dairy animals and other resources necessary to produce such milk and the processing, packaging, and distribution of such milk are the personal enterprise, and the personal risk, of such person.

§ 1068.11 [Reserved]

§ 1068.12 Producer.

(a) Subject to the exception of paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1068.9(c); or

(3) Diverted from a pool plant in accordance with § 1068.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilizations pursuant to § 1068.44(a)(8)(iii) and the corresponding step of § 1068.44(b); and

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1068.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1068.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, this operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1068.9(c), is the handler for such milk;

(d) Diverted from a pool plant described in § 1068.7(a) for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1068.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quantity of milk diverted by a cooperative association during the month as a percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month shall not exceed the combined Class II and III utilization percentage for the same month of the prior year. (Upon the effective date of this order, the market administrator shall compute and announce the aggregate weighted average Class II and III utilization percentage of the four markets combined herein for the preceding 12-month period. Such computation shall be used in determining the diversion limitation pursuant to paragraph (e)(2) and (3) of this section during the first year the order is effective.);

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk pursuant to paragraph (e)(2) of this section. The total quantity of milk so diverted during the month as a percent of the producer milk physically received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator shall not exceed the combined Class II and III utilization percentage for the same month of the prior year;

(4) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the days of production last diverted shall be used in determining which milk should not be producer milk; and

(5) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1068.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1068.40(b)(1) from any source other than producers, handlers described in § 1068.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1068.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1068.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1068.40(b)(1)) for which the handler fails to establish a disposition.

§ 1068.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1068.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1068.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1068.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1068.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1068.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1068.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1068.31 Payroll reports.

(a) On or before the last day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator his producer payroll for the preceding month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1068.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1068.32 Other reports.

In addition to the reports required pursuant to §§ 1068.30 and 1068.31, the following shall be reported to the market administrator:

(a) Each handler specified in § 1068.9(g) who operates an unregulated supply plant shall report as required in § 1068.30, except that the receipts of skim milk and butterfat in Grade A milk shall be reported in lieu of those in producer milk.

(b) Each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1068.40 Classes of utilization.

Except as provided in § 1068.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1068.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk) are processed and from which (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the

quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1068.15; and

(6) In shrinkage assigned pursuant to § 1068.41(a) to the receipts specified in § 1064.41(a)(2) and in shrinkage specified in § 1068.41(b) and (c).

§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1068.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1068.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1068.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1068.44(a)(12) and the corresponding step of § 1068.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1068.44(a)(7) or the corresponding step of § 1068.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1068.44(a)(11) or (12) or the corresponding steps of § 1068.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1068.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of

this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1068.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such noonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handled described in § 1068.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1068.9(c) to another handler's pool plant shall be classified with producer milk received at the transferee-handler's plant pursuant to § 1068.44(c).

§ 1068.43 General classification rules.

In determining the classification of producer milk, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1068.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1068.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1068.40, 1068.41, and 1068.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1068.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1068.40 through 1068.45, butterfat in skim milk either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1068.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1068.9(a) for each of his separate pool plants the classification of producer milk and milk received from a handler described in § 1068.9(c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1068.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1068.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1068.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1068.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk re-

maining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1068.40(b) (1) that was not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1068.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III the pounds of skim milk in fluid milk products and products specified in § 1068.40(b) (1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (5) and (7) (i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a) (1) of this section;

(11) Subject to the provisions of paragraph (a) (11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) and (8) (iii) of this section:

(i) Subject to the provisions of paragraphs (a) (12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1068.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a) (12) (i) of this section result in the total pounds of skim milk at all pool plants of the hander that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a) (12) (ii) of this section, should the computations pursuant to paragraph (a) (12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that

exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in recipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1068.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, and milk received from a handler described in § 1068.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1068.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1068.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1068.44(a)(12) and the corresponding step of § 1068.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1068.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

Class Prices

§ 1068.50 Class prices.

Subject to the provisions of § 1068.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.12.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1068.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1068.52 Plant location adjustments for handler.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include that territory, both inside and outside the marketing area, not included in Zones 2, 3, and 4.

(2) Zone 2 shall include:

(i) The Minnesota counties of Aitkin, Anoka, Becker, Benton, Big Stone, Carlton, Carver, Cass, Chippewa, Chisago, Crow Wing, Dakota, Dodge, Douglas, Fillmore, Goodhue, Grant, Houston, Hubbard, Isanti, Kanabec, Kandiyohi, Le Seur, McLeod, Meeker, Mille Lacs, Morrision, Nicollet, Otter Tail, Pine, Pope, Renville, Rice, Scott, Sibley, Sherburne, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Washington, Winona, Wilkins, and Wright;

(ii) The Wisconsin counties of Burnett, Calumet, Columbia, Crawford, Douglas (except the city of Superior), Green Lake, Manitowoc, Pierce, Polk, Richland, St. Croix, Sauk, Vernon, and Winnebago;

(iii) The Michigan counties of Dickinson, Gogebic, Iron, and Menominee; and

(iv) The Iowa County of Allamakee.

(3) Zone 3 shall include the Wisconsin counties of Adams, Ashland, Barron, Bayfield, Brown, Buffalo, Chippewa, Door, Dunn, Eau Claire, Florence, Forest, Iron, Juneau, La Crosse, Kewaunee, Marinette, Marquette, Monroe, Outagamie, Pepin, Rusk, Sawyer, Trempealeau, Washburn, Waupaca, Waushara, and Vilas.

(4) Zone 4 shall include the Wisconsin counties of Clark, Jackson, Langlade, Lincoln, Marathon, Menominee, Oconto, Oneida, Portage, Price, Shawano, Taylor, and Wood.

(b) For milk received at a plant from producers or a handler described in § 1068.9(c) and which is classified as Class I milk, the price specified in § 1068.52(a) shall be adjusted by the following amounts:

Zone:	*Adjustment per hundredweight*
1	No adjustment.
2	Minus 6¢.
3	Minus 10¢.
4	Minus 16¢.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1068.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1068.60 Handler's value of milk for determining pool obligation.

For the purpose of determining each handler's pool obligation, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1068.9 (b) and (c) with respect to milk that was not received at a pool plant, as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1068.9(c) in each class as determined pursuant to § 1068.43(a) and § 1068.44(c) by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1068.44(a)(14) and the corresponding step of § 1068.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1068.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1068.44(a)(9) and the correspondir.g step of § 1068.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(7) (i) through (iv) and the corresponding step of § 1068.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(7) (v) and (vi) and the corresponding step of § 1068.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I Pursuant to § 1068.44(a)(11) and the corresponding step of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract, for a handler described in § 1068.9(c), the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1068.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Estimate the value of milk of all handlers who made the payments pursuant to § 1068.71 for the preceding month;

(b) Add an amount equal to the estimated value of the producer location adjustments;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting account by:

(1) The estimated hundredweight of producer milk; and

(2) The estimated hundredweight of other source milk for which a value is computed pursant to § 1068.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1068.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1068.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1068.71, 1068.76, and 1068.77 and out of which he shall make all payments due handlers pursuant to §§ 1068.72 and 1068.77: *Provided,* That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value at the unform price, as adjusted pursant to § 1068.75, of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(c), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1068.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plan in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1068.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1068.71(a)(2) exceeds the amount computed pursuant to § 1068.71(a)(1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary fund become available.

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the third day after the end of the month, each handler shall make payment at not less than the uniform price (adjusted for his plant location) for the preceding month for skim milk and butterfat received during the first 15 days of the month to:

(1) A cooperative association that is a handler pursuant to § 1068.9 (a) or (c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers; and

(3) A nonmember producer who has not authorized a cooperative association to market his milk and collect payment

on his behalf and who has not discontinued shipping milk to such handler.

(b) On or before the 11th day after the end of the month, each handler shall pay for skim milk and butterfat received during the month from a cooperative association which is a handler pursuant to § 1068.9(a) at not less than the value of such milk computed at the applicable class prices for the month at the location of the transferee or transferor plant, whichever is higher, less the partial payment pursuant to paragraph (a) of this section.

(c) On or before the 18th day after the end of the month, each handler shall make payment at not less than the uniform price for the month, as adjusted by the butterfat differential specified in § 1068.74 and location adjustments specified in § 1068.52, for all skim milk and butterfat received during the month (less the partial payment pursuant to paragraph (a) of this section) to:

(1) A cooperative association that is a handler pursuant to § 1068.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers; and

(3) A nonmember producer who has not authorized a cooperative association to market his milk and collect payment on his behalf.

(d) In making payments pursuant to paragraphs (a) and (c) of this section, deductions may be made for marketing service pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, he may reduce pro rata his payments to producers pursuant to paragraph (c) by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(e) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed under § 1068.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

The uniform price for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1068.30(b) and 1068.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1068.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1068.60 for such handler shall include, in lieu of the value of other source milk specified in § 1068.60(f) less the value of such other source milk specified in § 1068.71(a)(2)(ii), a value of milk determined pursuant to § 1068.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1068.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1068.30(b) and 1068.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records

showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1068.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1068.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1068.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1068.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to § 1068.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payments to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by § 1068.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1068.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1068.71, 1068.76, and 1068.77(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1068.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than:

(1) Receipts of producer milk by a handler described in § 1068.9(c) that were delivered to pool plants of other handlers; and

(2) Receipts of producer milk that were transferred to pool plants of other handlers (other than cooperative associations) by a cooperative association in its capacity as a handler pursuant to § 1068.9(a);

(b) Receipts from a handler described in § 1068.9(c);

(c) Receipts from a cooperative association in its capacity as a handler pursuant to § 1068.9(a);

(d) Other source milk allocated to Class I pursuant to § 1068.44(a) (7) and (11) and the corresponding steps of § 1068.44(b), except such other source milk that is excluded from the computations pursuant to § 1068.60 (d) and (f); and

(e) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1068.76(a)(2).

§ 1068.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1068.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Part 1076—Milk in the Eastern South Dakota Marketing Area

1. Revise § 1076.2 to read as follows:

§ 1076.2 Eastern South Dakota marketing area.

"Eastern South Dakota marketing area," hereinafter called the "marketing area," means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon

MINNESOTA COUNTIES

Lincoln.
Nobles.
Pipestone.
Rock.

SOUTH DAKOTA COUNTIES

Aurora.
Beadle.
Bon Homme.
Clark.
Clay.
Codington.
Davison.
Douglas.
Hamlin.
Hanson.
Hutchison.
Jerauld.
Kingsbury.
Lake.
Lincoln.
McCook.
Miner.
Minnehaha.
Moody.
Sanborn.
Spink.
Turner.
Union (except Jefferson Township and the city of North Sioux City and the unorganized territory adjacent thereto).
Yankton.

§ 1076.13 [Amended]

2. In § 1076.13(c)(3), change the words "from which diverted" to "to which diverted."

3. Revise § 1076.50(a) to read as follows:

§ 1076.50 Class prices.

Subject to the provisions of § 1076.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

4. Revise § 1076.52(a) to read as follows:

§ 1076.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located in Minnesota, North Dakota, or that portion of South Dakota north of U.S. Highway 90, and which is

classified as Class I milk, the price specified in § 1076.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Mitchell or Sioux Falls, South Dakota.

* * * * *

Signed at Washington, D.C., on: October 22, 1975.

DONALD E. WILKINSON,
Administrator.

[FR Doc.75-28832 Filed 10-28-75;8:45 am]